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**COMMISSION REGULATION (EU) No .../..**

**of 18.12.2013**

**declaring certain categories of aid compatible with the internal market in application of  
Articles 107 and 108 of the Treaty  
DRAFT**

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(4) thereof,

Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid<sup>1</sup>, as amended by Council Regulation (EU) No 733/2013 of 22 July 2013, and in particular Article 1(1) (a) and (b) thereof,

[Having published a draft of this Regulation [*OJ reference*],]

[After consulting the Advisory Committee on State Aid,]

Whereas:

- (1) State funding meeting the criteria in Article 107(1) of the Treaty on the Functioning of the European Union ("the Treaty") constitutes State aid and requires notification to the Commission by virtue of Article 108(3) of the Treaty. However, according to Article 109 of the Treaty, the Council may determine categories of aid that are exempted from this notification requirement. In accordance with Article 108(4) of the Treaty the Commission may adopt regulations relating to those categories of State aid. In Regulation (EC) No 994/98, the Council decided, in accordance with Article 109 of the Treaty, that the following categories may be exempt from the notification requirement: aid to small and medium-sized enterprises ('SMEs'), aid in favour of research and development, aid in favour of environmental protection, employment and training aid and aid that complies with the map approved by the Commission for each Member State for the grant of regional aid. On that basis, the Commission adopted Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation)<sup>2</sup> which applies until 31 December 2013.
- (2) In addition, on 22 July 2013 the Council adopted Regulation (EU) No 733/2013<sup>3</sup> amending Regulation (EC) No 994/98, through which it enabled the Commission to extend the block exemption to new categories of aid. On this basis, this Regulation should provide block exemptions for categories of aid in relation to which the

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<sup>1</sup> OJ L 142, 14.5.1998, p. 1.

<sup>2</sup> OJ L 214, 9.8.2008, p. 3.

<sup>3</sup> OJ L 204, 31.7.2013, p. 11.

Commission's experience allows it to define compatibility conditions. Such new categories of block exempted aid should include: aid to make good the damage caused by certain natural disasters, social aid for transport for residents of remote regions, aid for broadband infrastructures, aid for innovation, aid for culture and heritage conservation, aid for sport and multifunctional recreational infrastructures. Provided that sufficient case experience is further developed allowing the design of operational exemption criteria ensuring the ex-ante compatibility of other categories of aid, the Commission intends to review the scope of this Regulation with a view to including certain types of aid in those areas. In particular, the Commission envisages developing criteria for port and airport infrastructure by December 2015.

- (3) With its Communication on EU State Aid Modernisation (SAM)<sup>4</sup>, the Commission launched a wider review of the State aid rules. The main objectives of this modernisation are (i) to achieve sustainable, smart and inclusive growth in a competitive internal market, while contributing to Member State efforts towards a more efficient use of public finances; (ii) to focus Commission ex ante scrutiny of aid measures on cases with the biggest impact on the internal market, while strengthening Member State cooperation in state aid enforcement; and (iii) to streamline the rules and provide for faster, better informed and more robust decisions based on a clear economic rationale, a common approach and clear obligations.
- (4) This Regulation, allows for a better prioritisation of enforcement activities, as well as greater simplification and should be combined with greater transparency, effective evaluation and the control of compliance with the State aid rules at national and Union levels, while keeping proportionality and preserving the institutional competences of the Commission and the Member States.
- (5) The Commission's experience in applying Regulation (EC) No 800/2008 has allowed it, on the one hand, to better define the conditions under which certain categories of aid can be considered compatible with the internal market and to extend the scope of block exemptions and, on the other hand, made clear the necessity to strengthen transparency, monitoring and allow for a proper evaluation of very large schemes in light of their effect on competition in the internal market.
- (6) The general conditions for the application of this Regulation should be defined on the basis of a set of common principles that ensure that the aid serves a purpose of common interest, has a clear incentive effect, is appropriate and proportionate, is awarded in full transparency and subject to a control mechanism and regular evaluation, and does not adversely affect trading conditions to an extent that is contrary to the common interest .
- (7) Any aid that fulfils all the conditions laid down in this Regulation both general and specific to the relevant categories of aid should be exempt from the notification obligation laid down in Article 108(3) of the Treaty.
- (8) State aid within the meaning of Article 107(1) of the Treaty not covered by this Regulation remains subject to the notification requirement of Article 108(3) of the Treaty. This Regulation is without prejudice to the possibility for Member States to notify aid the objectives of which correspond to objectives covered by this Regulation.

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<sup>4</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU State Aid Modernisation (SAM), 8.5.2012, COM (2012) 209 final.

- (9) In view of the larger potential impact of large schemes on trade and competition, this Regulation should not apply to schemes with an annual State aid expenditure exceeding a threshold based on national GDP and an absolute value, notably with a view to subjecting them to ex-post evaluation. Such schemes should be notified pursuant to Article 108(3) of the Treaty with a view to assessing their compliance with the compatibility criteria set in the present Regulation, and defining upfront an evaluation plan and the temporal duration of the scheme. The ex-post evaluation should aim at verifying whether the assumptions and conditions underlying the compatibility of the scheme have been achieved, the effectiveness of the aid measure in light of its pre-defined general and specific objectives and indicators and the impact of the measure on competition and trade. Prolongation or successors of schemes subject to evaluation should be assessed taking account the outcome of such evaluation.
- (10) This Regulation should not apply to aid contingent upon the use of domestic over imported products or aid to export-related activities. In particular, it should not apply to aid financing the establishment and operation of a distribution network in other countries. Aid towards the cost of participating in trade fairs or of studies or consultancy services needed for the launch of a new or existing product on a new market in another Member State or third country should not normally constitute aid to export-related activities.
- (11) This Regulation should apply in principle across most sectors of the economy. However, in some sectors the scope needs to be limited in light of the special rules applicable. In the fisheries and aquaculture sector, this Regulation should apply only to training aid, aid for SMEs' access to finance, aid in the field of research and development, innovation aid for SMEs, and aid for disadvantaged workers and for workers with disabilities. In the primary production of agricultural products, this Regulation should only apply to regional operating aid (compensation for additional costs other than transport costs in an outermost region), risk finance aid, aid for research and development, innovation aid for SMEs, environmental aid, training aid and aid for disadvantaged workers and for workers with disabilities to the extent that these categories of aid are not covered by Commission Regulation ... *[replacing Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Article 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products]* .
- (12) This Regulation should apply to the processing and marketing of agricultural products, provided that certain conditions are met. Neither on-farm activities necessary for preparing a product for the first sale, nor the first sale by a primary producer to resellers or processors nor any activity preparing a product for a first sale should be considered processing or marketing for the purposes of this Regulation. The Court of Justice of the European Union has established<sup>5</sup> that, once the Union has legislated for the establishment of a common organisation of the market in a given sector of agriculture, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it. This Regulation should therefore not apply to aid the amount of which is fixed on the basis of the price or quantity of products purchased or put on the market, nor should it apply to aid which is linked to an obligation to share it with primary producers.

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<sup>5</sup> Case C-456/00 *France v Commission* [2002] ECR I-11949.

- (13) Taking account of Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines<sup>6</sup>, this Regulation should not apply to aid aimed at facilitating the closure of uncompetitive coal mines under Council Decision of 10 December 2010. Taking account of the fore-mentioned Council Decision,, this Regulation should apply to the coal sector for other types of aid, in particular aid for research, development and innovation, aid for environmental protection and for training aid, with the exception of regional aid.
- (14) The Commission must ensure that authorised aid does not adversely affect trading conditions to an extent that is contrary to the general interest. Therefore, aid in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market should be excluded from the scope of this Regulation, with the exception of aid schemes to make good the damage caused by certain natural disasters.
- (15) Aid granted to undertakings in difficulty should be excluded from the scope of this Regulation, since such aid should be assessed under the Guidelines on State aid for rescuing and restructuring firms in difficulty<sup>7</sup> in order to avoid their circumvention, with the exception of aid schemes to make good the damage caused by certain natural disasters. In order to provide legal certainty, it is appropriate to establish clear criteria that do not require an assessment of all the particularities of the situation of an undertaking to determine whether an undertaking is considered to be in difficulty for the purposes of this Regulation.
- (16) State aid enforcement is highly dependent on the cooperation of Member States. Therefore, Member States should take all necessary measures to ensure compliance with this Regulation, including compliance of individual aid granted under block-exempted schemes.
- (17) Due to the higher risk of adversely affecting trading conditions, large amounts of aid granted either individually or cumulatively should be assessed by the Commission upon notification. Thresholds should therefore be set for each category of aid within the scope of this Regulation at a level which takes into account the category of aid concerned and its likely effect on trading conditions. Any aid granted above those thresholds remains subject to the notification requirement of Article 108(3) of the Treaty.
- (18) For the purpose of transparency, equal treatment and effective monitoring, this Regulation should apply only to aid in respect of which it is possible to calculate precisely the gross grant equivalent ex ante without the need to undertake a risk assessment ('transparent aid'). For certain specific aid instruments, such as loans, guarantees, tax measures, risk finance measures and, in particular, repayable advances, this Regulation should define the conditions under which they can be considered transparent. For instance, capital injections would not be considered transparent aid, without prejudice to specific conditions concerning risk finance. Aid comprised in guarantees should be considered as transparent if the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down for the respective type of undertaking. For instance, for small and medium-sized enterprises (hereinafter SMEs), the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to

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<sup>6</sup> OJ L 336, 21.12.2010, p. 24.

<sup>7</sup> OJ C 244, 1.10.2004, p. 2, prolonged by the Commission communication concerning the prolongation of the application of the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 1 October 2004, OJ C 296, 2.10.2012, p.3.

State aid in the form of guarantees<sup>8</sup> indicates levels of annual premium above which a State guarantee would be deemed not to constitute aid.

- (19) To ensure that the aid is necessary and acts as an incentive to further develop activities or projects, this Regulation should not apply to aid for activities in which the beneficiary would engage also absent the aid. Aid should only be exempt from notification under this Regulation if the work on the aided project or activity starts after the beneficiary has submitted a written application for the aid.
- (20) As regards any ad hoc aid covered by this Regulation granted to a beneficiary which is a large enterprise, the Member State should, in addition to the conditions applying to SMEs, also ensure that the beneficiary has analysed, in an internal document, the viability of the aided project or activity with aid and without aid. The Member State should verify that this internal document confirms a material increase in size or scope of the project/activity, a material increase in the total amount spent by the beneficiary on the subsidised project or activity or a material increase in the speed of completion of the project/activity concerned. As regards regional aid, incentive effect should be established on the basis of the fact that the investment project would not have been carried out in the assisted region concerned in the absence of the aid.
- (21) Automatic aid schemes in the form of tax advantages should continue to be subject to a specific condition concerning the incentive effect, in light of the fact that the aid resulting from such schemes is granted within the framework of different procedures than other categories of aid. That specific condition means that the aforementioned schemes should have been adopted before work on the aided project or activity started. However, this condition should not apply in the case of fiscal successor schemes provided the activity was already covered by the previous fiscal schemes in the form of tax advantages. For the assessment of the incentive effect of such schemes, the crucial moment is the moment when the tax measure was set out for the first time in the original scheme, which is then replaced by the successor scheme.
- (22) As regards regional operating aid, regional urban development aid, aid for SME's access to finance, aid for the recruitment of disadvantaged workers, aid for employment of workers with disabilities and aid compensating for the additional costs of employing workers with disabilities, aid in the form of reductions in environmental taxes, aid to make good the damage caused by certain natural disasters, social aid for transport for residents of remote regions and aid for culture and heritage conservation, the existence of an incentive effect does not apply or should be presumed if specific conditions set out for those categories of aid in this Regulation are fulfilled.
- (23) With a view to ensuring that aid is proportionate and limited to the amount necessary, maximum aid amounts should, whenever possible, be defined in terms of aid intensities in relation to a set of eligible costs. Where the maximum aid intensity cannot be set, because eligible costs cannot be identified or in order to provide simpler instruments for small amounts, maximum aid amounts defined in nominal terms should be set out in order to ensure proportionality of aid measures. The aid intensity and the maximum aid amounts should be fixed, in the light of the Commission's experience, at a level that minimises distortions of competition in the aided sector while appropriately addressing the market failure or cohesion issue concerned. For regional investment aid, the aid intensity has to comply with the allowable aid intensities under the regional aid maps.

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<sup>8</sup> OJ C 155, 20.6.2008, p. 10.

- (24) For the calculation of aid intensity, all figures used should be taken before any deduction of tax or other charges. Aid payable in several instalments should be discounted to its value at the moment of granting. The eligible costs should also be discounted to their value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the amount of aid in the case of aid which does not take the form of a grant should be the discount rate applicable at the time of the grant, as laid down in the Commission Communication on the revision of the method for setting the reference and discount rates<sup>9</sup>. The identification of eligible costs should be supported by clear, specific and up-to date documentary evidence. Where aid is awarded by means of tax advantages, aid tranches should be discounted on the basis of the discount rates applicable on the various dates when the tax advantages become effective. The use of aid in the form of repayable advances should be promoted, since such risk-sharing instruments are conducive to strengthened incentive effect of aid. It is therefore appropriate to establish that where aid is granted in the form of repayable advances the applicable aid intensities laid down in this Regulation might be increased, with the exception of regional aid (since the latter may be exempt only if it complies with approved maps).
- (25) In the case of tax advantages on future taxes, the applicable discount rate and the exact amount of the aid tranches may not be known in advance. In such a case, Member States should set in advance a cap on the discounted value of the aid respecting the applicable aid intensity. Subsequently, when the amount of the aid tranche at a given date becomes known, discounting can take place on the basis of the discount rate applicable at that time. The discounted value of each aid tranche should be deducted from the overall amount of the cap ("capped amount").
- (26) To determine whether the individual notification thresholds and the maximum aid intensities laid down in this Regulation are respected, the total amount of state aid measures for the aided activity or project should be taken into account. Moreover, this Regulation should specify the circumstances under which different categories of aid may be cumulated. Aid exempted by this Regulation and any other compatible aid exempted under this Regulation or approved by the Commission may be cumulated as long as those measures concern different identifiable eligible costs. Where different sources of aid are related to the same – partly or fully overlapping – identifiable eligible costs, cumulation should be allowed up to the highest aid intensity or aid amount applicable to that aid under this Regulation. This Regulation should also set out special rules for cumulation of aid measures with and without identifiable eligible costs, for cumulation with de minimis aid and for cumulation with aid in favour of workers with disabilities.
- (27) Union funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the Union, that is not directly or indirectly under the control of Member States), does not constitute State aid. Where such Union funding is combined with State aid, only the latter should be considered for determining whether notification thresholds and maximum aid intensities are respected, provided the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate laid down in the applicable rules of Union law.
- (28) Given that State aid within the meaning of Article 107(1) of the Treaty is, in principle, prohibited, it is important that all parties have a possibility to check whether an aid is

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<sup>9</sup> Communication from the Commission on the revision of the method for setting the reference and discount rates OJ C 14, 19.1.2008, p. 6.

granted in compliance with the applicable rules. Transparency of State aid is, therefore, essential for the correct application of Treaty rules and leads to better compliance, greater accountability, peer review and ultimately more effective public spending. To ensure transparency, this Regulation should require the establishment of single State aid websites, at regional or national level. On those websites the Member States should publish summary information about each aid measure exempted under this Regulation in a standardized format, the full text of each aid measure and information about the award of individual aid. That obligation should be a condition for the compatibility of the individual aid with the internal market. The links to the State aid websites of all the Member States should be published on the Commission's website. In accordance with Article 3 of Regulation (EC) No 994/98, summary information on each aid measure exempted under this Regulation should be published on the website of the Commission.

- (29) To ensure effective monitoring of the aid measures in accordance with Regulation (EC) No 994/98, it is appropriate to establish requirements regarding the reporting by the Member States of aid measures which have been exempted pursuant to this Regulation and the application of this Regulation. Moreover, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid exempted by this Regulation, in light of the limitation period established in Article 15 of Regulation (EC) No 659/1999<sup>10</sup>.
- (30) To reinforce the effectiveness of compatibility conditions set out in this Regulation, it should be possible for the Commission to withdraw the benefit of the block exemption for the future aid measures in the event of failure to comply with these requirements. The Commission should be able to restrict the withdrawal of the benefit of the block exemption to certain types of aid, certain beneficiaries or aid measures adopted by certain authorities, where non-compliance with this Regulation affects only a limited group of measures or certain authorities. Such a targeted withdrawal should provide a proportionate remedy directly linked to the identified non-compliance with this Regulation. In case of failure to meet compatibility conditions set out in Chapters I and III, aid granted is not covered by this Regulation and, as a consequence, constitutes unlawful aid, which the Commission will examine in the framework of the relevant procedure as set out in Regulation No (EC) No 659/1999. In case of failure to fulfil the requirements of Chapter II, the withdrawal of the benefit of the block exemption in respect of the future aid measures does not affect the fact that the past measures complying with this Regulation were block exempted.
- (31) To eliminate differences that might give rise to distortions of competition and to facilitate coordination between different Union and national initiatives concerning SMEs, as well as for reasons of administrative clarity and legal certainty, the definition of SME used for the purpose of this Regulation should be based on the definition in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium sized enterprises<sup>11</sup>.
- (32) By addressing the handicaps of disadvantaged regions, regional aid promotes the economic, social and territorial cohesion of Member States and the Union as a whole. Regional aid is designed to assist the development of the most disadvantaged areas by supporting investment and job creation in a sustainable context. In areas fulfilling the conditions of Article 107(3)(a) of the Treaty, regional aid may be awarded to promote

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<sup>10</sup> OJ L83, 27.3.1999, p. 1.

<sup>11</sup> OJ L 124, 20.5.2003, p. 36

the setting-up of new establishments, the extension of existing establishments, the diversification of the output of an establishment or a fundamental change in the overall production process of an existing establishment. Considering that large enterprises are less affected by regional handicaps than SMEs when investing in an area fulfilling the conditions of Article 107(3)(c) of the Treaty, regional aid to large enterprises should be exempt from the notification requirement only for initial investments in favour of new economic activity in those areas.

- (33) Where a regional aid scheme is targeted at particular sectors of the economy, the objective and likely effects of the scheme may be sectorial rather than horizontal. Therefore, sectorial schemes cannot be exempt from the notification requirement. However, the Commission, upon notification, can assess their possible positive effects under the applicable guidelines or frameworks. In particular, this is the case for regional aid schemes covering economic activities in the coal sector, the shipbuilding sector, the transport sector. Furthermore, due to specific characteristics of the steel and synthetic fibres, it is considered that the negative effects of regional aid in those sectors cannot be outweighed by the positive cohesion effects; for those reasons, regional aid in these sectors cannot be granted. Finally, the tourism and broadband sectors play an important role in national economies and, in general, have a particularly positive effect on regional development. Regional aid schemes aimed at tourism activities and broadband should therefore be exempt from the notification requirement. Processing and marketing of agricultural products has also strong links with local and regional economies and should benefit from the block exemption.
- (34) Investments in assisted regions in favour of energy from renewable sources, cogeneration and efficient district heating and cooling shall be allowed under the conditions laid down in the environmental section of this Regulation; this shall minimise their distortive impact on the internal energy market and shall ensure an increased focus on cost efficiency. In view of its high distortive potential impact on the internal energy market, state aid to electricity generation from non-renewable sources and energy infrastructures shall not be exempt from the notification requirement of Article 108(3) of the Treaty.
- (35) So as not to favour the capital factor of an investment over the labour factor, it should be possible to measure regional investment aid on the basis of either the costs of the investment or the wage costs of employment directly created by an investment project.
- (36) Regional investment aid should not be exempt from notification when it is awarded to a beneficiary that has closed down the same or a similar activity in the EEA in the two years preceding its application for regional investment aid or which, at the moment of the aid application, has concrete plans to close down such an activity within a period of up to two years after the initial investment for which aid is requested is completed in the area concerned.
- (37) The Commission has gained sufficient experience in the application of Article 107(3)(a) and (c) of the Treaty as regards regional operating aid to compensate the additional transport costs of goods produced in the outermost regions or in sparsely populated areas and the additional production and operating costs (other than additional transport costs) incurred by beneficiaries established in the outermost regions. To minimize the environmental impact and emissions, the aid to compensate for additional transport costs shall be calculated on the basis of the transport means which results in the lowest external cost to the environment including energy use. Regional operating aid to compensate for additional costs in the outermost regions,

other than additional transport costs, can only be compatible with the internal market and can be exempt from the notification requirement of Article 108(3) of the Treaty in so far as the level of that aid is limited to a certain proportion of the gross value added annually created by the beneficiary in the outermost region concerned or of the annual labour costs incurred by the beneficiary in the outermost region concerned.

- (38) By addressing the high concentration of economic, environmental and social problems of urban areas located in assisted areas identified in a regional aid map, urban development aid contributes to the economic, social and territorial cohesion of the Member States and the Union as a whole. The market failures to be addressed by the urban development aid refer to the urban development funding environment, the lack of integrated urban development approach, a funding deficit necessitating greater leverage of scarce public resources and the need for a more commercial approach to the regeneration of urban areas. Urban development aid to support the development of participative, integrated and sustainable strategies to tackle the additional problems identified in the assisted areas should therefore be block exempted.
- (39) Investments corresponding to Europe 2020 priorities in green technologies, R&D&I and shift towards low carbon economy, undertaken in assisted areas identified in a regional aid map should be able to receive higher aid amounts by means of a regional bonus.
- (40) SMEs play a decisive role in job creation and, more generally, act as a factor of social stability and economic development. However, their development may be limited by market failures, leading to these SMEs suffering from the following typical handicaps. SMEs often have difficulties in obtaining capital or loans, given the risk-averse nature of certain financial markets and the limited collateral that they may be able to offer. Their limited resources may also restrict their access to information, notably regarding new technology and potential markets. To facilitate the development of the economic activities of SMEs, this Regulation should therefore exempt certain categories of aid when they are granted in favour of SMEs. These categories should include, in particular SME investment aid and SME participation in fairs.
- (41) SMEs participating in the European Territorial Cooperation projects covered by Commission Regulation [COM(2011)611 ERDF/ETC] often find difficulties in financing additional costs stemming from the cooperation between partners located in different regions and in different Member States or third countries. Given the importance of the European Territorial Cooperation (ETC) as a goal of cohesion policy providing a framework for the implementation of joint actions and policy exchanges between national, regional and local actors from different Member States or third countries, this Regulation should address certain difficulties faced by the ETC projects in order to facilitate their compliance with State aid rules. The ETC-specific issues that this Regulation should address relate to the applicable regional aid intensity for ETC projects, SMEs' cooperation costs linked to ETC projects and to obligations concerning publication and information, reporting and keeping records for monitoring purposes.
- (42) Having regard to the specific handicaps and differences between small and medium-sized enterprises, different basic aid intensities and different bonuses may apply.
- (43) On the basis of the experience gained in applying the Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises<sup>12</sup>, there

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<sup>12</sup> OJ C 194, 18.8.2006, p. 2–21

are to be a number of specific risk capital market failures in the Union in respect of certain types of investments at certain stages of the undertakings' development. Those market failures result from an imperfect matching of supply and demand for risk capital. As a result, the level of risk capital provided in the market may be too restricted and undertakings do not obtain funding despite having a valuable business model and growth prospects. The main source of market failure relevant to risk capital markets, which particularly affects access to capital by SMEs and which may justify public intervention, relates to imperfect or asymmetric information. It affects not only the provision of risk capital, but also hampers access to debt finance for certain SMEs. Consequently, risk finance measures which seek to attract private capital for risk finance provision to unlisted SMEs affected by the funding gap and which ensure profit-driven financing decisions and commercial management of financial intermediaries should be exempt from the notification requirement under certain conditions.

- (44) Under certain conditions, start-up aid for small enterprises, aid to alternative trading platforms specialised in SMEs and aid for costs related to the scouting of SMEs should also be exempt from the notification requirement.
- (45) Aid for research and development and innovation aid can contribute to sustainable economic growth, strengthen competitiveness and boost employment. Experience with the application of Regulation (EC) No 800/2008 and the Community framework for State aid for research and development and innovation<sup>13</sup> shows that market failures may prevent the market from reaching optimal output and lead to inefficiencies. Such inefficient outcomes generally relate to externalities, public goods/knowledge spillovers, imperfect and asymmetric information, and coordination and network failures.
- (46) Aid for research, development and innovation is of particular importance for SMEs, which may experience difficulties in gaining access to new technological developments, knowledge transfer or highly qualified personnel. Aid for research and development projects, aid for feasibility studies, as well as innovation aid for SMEs, including aid to cover industrial property rights costs for SMEs, may remedy those problems and should therefore be exempt from the requirement of notification under certain conditions.
- (47) As regards project aid for research and development, the aided part of the research project should completely fall within the categories of fundamental research, industrial research or experimental development. When a project encompasses different tasks, each task should be qualified as falling under the categories of fundamental research, industrial research or experimental development or as not falling under any of those categories. That qualification need not necessarily be chronological, moving sequentially over time from fundamental research to activities closer to the market. Accordingly, a task which is carried out at a late project stage may be qualified as industrial research. Similarly, an activity carried out at an earlier stage may constitute experimental development. The aided part of the project may also include feasibility studies preparatory to research activities.
- (48) High-quality research infrastructures are increasingly necessary for ground-breaking research and innovation because they attract global talent and are essential in particular for new information and communication technologies and key enabling technologies. Public research infrastructures should continue to partner with industry research. Access to publicly funded research infrastructures should be granted on a

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<sup>13</sup> OJ C 323, 30.12.2006, p. 1–26

transparent and non-discriminatory basis and on market terms. If the latter conditions are not respected, the aid measure cannot be exempt from the notification requirement. Multiple parties may own, operate and use a given research infrastructure, and public entities and undertakings may use the infrastructure collaboratively.

- (49) Research infrastructures may perform both economic and non-economic activities. In order to avoid State aid to economic activities through public funding of non-economic activities, the costs and financing of economic and non-economic activities must be clearly separable. When an infrastructure is used for both economic and non-economic activities, the funding through State resources of the costs linked to the non-economic activities of the infrastructure does not constitute State aid. Public funding falls under State aid rules only insofar as it covers costs linked to the economic activities. Only the latter are taken into account in view of ensuring compliance with the notification thresholds and maximum aid intensities. If the infrastructure is used almost exclusively for a non-economic activity, it may fall outside State aid rules in its entirety, even if it is also used for a purely ancillary economic activity, i.e. an activity which is directly related to and necessary for the operation of the infrastructure or intrinsically linked to its main non-economic use, and is limited in scope. This should be considered to be the case when the capacity allocated each year to such activity does not exceed 15 per cent of the research infrastructure's overall annual capacity.
- (50) Aid for innovation clusters aims at tackling market failures linked with coordination problems hampering the development of clusters, or limiting the interactions and knowledge flows within clusters. State aid can contribute in two ways to solve this problem: firstly, by supporting investment in open and shared infrastructures for innovation clusters, and, secondly, by supporting operation of clusters, so that collaboration, networking and learning is enhanced. Operating aid for innovation clusters should, however, only be allowed on a temporary basis for a limited period. The ratio of the total amount of aid granted to the total eligible costs over this period should not exceed 50 per cent, regardless of how the aid is distributed over that period
- (51) Process and organisational innovation may suffer from market failures in the form of imperfect information and positive externalities, which need to be addressed by specific measures. Aid for this type of innovation is mainly relevant for SMEs, as they face constraints that may hamper their capability to improve their production or delivery methods or to significantly enhance their business practices, workplace organisation and external relations. In order to stimulate large enterprises to collaborate with SMEs in process and organisational innovation activities, aid measures which support the costs of large enterprises for such activities should also benefit from the block exemption regulation under certain conditions.
- (52) The promotion of training and the recruitment / employment of disadvantaged workers and of workers with disabilities constitutes a central objective of the economic and social policies of the Union and its Member States.
- (53) Training usually generates positive externalities for society as a whole, since it increases the pool of skilled workers from which other firms may draw, improves the competitiveness of the Union industry and plays an important role in the Union employment strategy. Such aid should therefore be exempt from the notification requirement under certain conditions. In light of the particular handicaps which SMEs face and the higher relative costs that they must bear when they invest in training, the intensities of aid exempted by this Regulation should be increased for SMEs. Furthermore, the intensities of aid exempted by this Regulation should be increased if

the training is given to disadvantaged workers or to workers with disabilities. The characteristics of training in the maritime transport sector justify a specific approach for that sector.

- (54) Certain categories of disadvantaged workers and workers with disabilities still experience particular difficulties in entering and remaining in the labour market. For this reason, public authorities are justified in applying measures providing incentives to undertakings to increase the levels of employment of these categories of workers, in particular of young people. Employment costs form part of the normal operating costs of any undertaking. It is therefore particularly important that aid for the employment of disadvantaged workers and of workers with disabilities should have a positive effect on employment levels of those categories of workers and should not merely enable undertakings to reduce costs which they would otherwise have to bear. Consequently, such aid should be exempt from the notification requirement when it is likely to assist those categories of workers in entering or re-entering and staying in the job market. The core elements of the EU disability strategy<sup>14</sup>, combining anti-discrimination, equal opportunities and active inclusion measures, reflect the United Nations Convention on the Rights of Persons with Disabilities to which the EU and the majority of the Member States are a party. This Regulation should refer to aid for workers with disabilities in the sense of Article 1 of the Convention.
- (55) Sustainable growth for a resource efficient, greener and more competitive economy is one of the main pillars of the Europe 2020 growth strategy<sup>15</sup>. Sustainable development is based, amongst other things, on a high level of protection and improvement of the quality of the environment. The area of environmental protection is confronted with market failures so that under normal market conditions, undertakings may not necessarily have an incentive to reduce the pollution caused by them since any such reduction may increase their costs without corresponding benefits. When undertakings are not obliged to internalise the costs of pollution, society as a whole bears these costs.
- (56) Introducing mandatory environmental standards can address such market failure. A higher level of environmental protection can be achieved by investments that go beyond mandatory Union standards. In order to incentivise undertakings to improve the level of environmental protection beyond these mandatory Union standards, State aid in this area shall be block exempted. In order not to dissuade Member States from setting mandatory national standards which are more stringent than the corresponding Union standards, such State aid may be granted, irrespective of the presence of mandatory national standards that are more stringent than the Union standard..
- (57) In principle aid should not be granted where investments bring undertakings into compliance with Union standards already adopted and not yet in force. However, State aid may result in undertakings improving their environmental behaviour if such State aid incentivises undertakings to adapt early to future Union standards before such standards enter into force and as long as such standards do not apply retroactively. Aid to undertakings to adapt to future Union standards, may result in achieving a high level of environmental protection sooner and this Regulation should therefore exempt such category of aid.

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<sup>14</sup> Communication from the Commission to The European Parliament, the Council, the European Economic And Social Committee and the Committee Of The Regions - European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe /\* COM/2010/0636 final

<sup>15</sup> Communication from the Commission - Europe 2020 A strategy for smart, sustainable and inclusive growth /\* COM/2010/2020 final \*/

- (58) As part of the EU 2020 strategy, the EU has set the objective to achieve a 20% increase in energy efficiency by 2020 and in particular adopted the Energy Efficiency Directive which establishes a common framework to promote energy efficiency within the Union pursuing the overall objective of saving at least 20% of the Union's primary energy consumption. In order to facilitate the achievement of these targets, measures supporting energy efficiency and energy saving investments, high-efficiency cogeneration as well as energy efficient district heating and cooling should be block exempted.
- (59) To achieve the Union renewable energy targets<sup>16</sup> and to the extent additional support is needed on top of a regulatory framework such as the Union emission trading scheme<sup>17</sup>, this Regulation should provide for the possibility to exempt aid granted to investments supporting energy from renewable sources. In view of the limited distortions of trade and competition, this Regulation should also provide for the possibility to block exempt operating aid for small scale installations producing renewable energy, subject to well-defined conditions. However, in order to minimise the amount of aid, support for electricity production from renewable sources should only be block exempted if granted on the basis of a competitive bidding process and using a mechanism which exposes renewable energy producers to market prices.
- (60) With regard to aid for the production of hydropower, its impact can be twofold. On the one hand, it has a positive impact in terms of low greenhouse gas emissions and on the other hand it might also have a negative impact on water systems and biodiversity. Therefore, when granting aid to hydropower Member States should respect Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy and in particular Article 4(7) which lays down criteria in relation to allowing new modifications of bodies of water.
- (61) It must also be ensured that aid is only granted to sustainable forms of renewable energy. Aid to biofuels should only be covered by this Regulation in so far as it is granted for advanced biofuels in line with the Commission proposal to limit global land conversion for biofuel production<sup>18</sup>.
- (62) Aid in the form of tax reductions pursuant to Directive 2003/96/EC<sup>19</sup> favouring environmental protection covered by this Regulation can indirectly benefit the environment. However, environmental taxes should reflect the social cost of emissions while reductions from taxes may adversely impact on this objective. It seems therefore appropriate to limit their duration to the duration of this Regulation. After this period, Member States should re-evaluate the appropriateness of the tax reductions concerned. However, where a specific article in this Regulation covers the aid measure granted in the form of a tax exemption, that article should apply.
- (63) Aid for the remediation of contaminated sites is justified in cases where the person liable under the applicable law for the contamination cannot be identified, triggering the application of the 'polluter pays' principle. The conditions on environmental

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<sup>16</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC - OJ L 140, 5.6.2009, p. 16–62

<sup>17</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC - OJ L 275, 25.10.2003, p. 32–46

<sup>18</sup> COM(2012)595 of 17.10.2012.

<sup>19</sup> OJ L 283, 31.10.2003, p. 51.

liability with regard to the prevention and remediation of environmental damage as defined in the Directive 2004/35/CE<sup>20</sup> of the European Parliament and of the Council of 21 April 2004 as amended by Directive 2006/21/EC<sup>21</sup> and Directive 2009/31/EC<sup>22</sup> should apply. Therefore, to facilitate the correction of existing environmental damage, this Regulation should exempt this type of aid under certain conditions.

- (64) Environmental studies can help to identify the investments to achieve a higher level of environmental protection. State aid to support the carrying out of environmental studies which aim to support investments in environmental protection as covered by this Regulation should therefore be block exempted. As energy audits are mandatory for large enterprises, they should not benefit of State aid.
- (65) In accordance with Article 107(2)(b) of the Treaty, aid to make good the damage caused by natural disasters is compatible with the internal market. For the purposes of this Regulation, earthquakes, landslides, floods, in particular floods brought about by waters overflowing river banks or lakeshores, avalanches, tornadoes, hurricanes, volcanic eruptions and wild fires should be considered events constituting a natural disaster. Damage caused by adverse weather conditions such as frost, hail, ice, rain or drought, which occur on a more regular basis, should not be considered a natural disaster within the meaning of Article 107(2)(b) of the Treaty. In order to ensure that aid granted to make good the damage caused by natural disasters is indeed covered by the exception this Regulation should lay down conditions following established practice the fulfilment of which will ensure that aid schemes to make good the damage caused by natural disasters can benefit from block exemption. Those conditions should relate, in particular, to the formal recognition by the competent Member States' authorities of the character of the event as a natural disaster, to a direct causal link between the damage caused by the natural disaster and the damages suffered by the beneficiary undertaking, which may include undertakings in difficulty, and should ensure that overcompensation is avoided. The compensation should not exceed what is necessary to enable the beneficiary to return to the situation before the disaster.
- (66) Aid has a social character for air and maritime passenger transport if it addresses the problem of steady connectivity for residents of remote regions by reducing certain transport ticket costs for them. This may be the case for outermost regions, Malta, Cyprus, other islands which are part of the territory of a Member State and sparsely populated areas. Where a remote region is linked to the European Economic Area by several transport routes, including indirect routes, aid should be possible for all those routes and for transport by all carriers operating on these routes. Aid should be granted without discrimination as to the identity of the carrier or type of service and may include regular, charter and low-cost services.
- (67) Broadband connectivity is of strategic importance for the achievement of the Europe 2020 objective of smart, sustainable and inclusive growth and innovation and for

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<sup>20</sup> OJ L 143, 30.4.2004, p. 56.

<sup>21</sup> Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC, OJ L 102, 11.4.2006, p. 15.

<sup>22</sup> Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006: OJ L 140, 5.6.2009, p. 114

social and territorial cohesion<sup>23</sup>. Investment aid for broadband infrastructure aims at fostering the deployment of such infrastructure and related civil engineering works in areas where no comparable infrastructure exists nor is likely to be deployed by market operators in the near future. In light of the Commission's experience, such investment aid does not give rise to undue distortions of trade and competition, provided that the conditions set out in this Regulation are met. Such conditions should aim, in particular, at limiting distortions of competition by subjecting aid to technology-neutral competitive selection and by ensuring wholesale access to the subsidised networks, taking into account the aid received by the network operator. Although under certain conditions virtual unbundling may be considered equivalent to physical unbundling, until more experience is acquired, there is a need to assess on a case by case basis whether a particular non-physical or virtual wholesale access product should be considered equivalent to local loop unbundling. For this reason, and until such experience in state aid individual cases or in the ex ante regulatory context can be taken into account in a future review, physical unbundling should be required for the purposes of benefiting from the present block exemption regulation. Where future costs and revenue developments are uncertain and there is a strong asymmetry of information, Member States should also adopt financing models that include monitoring and claw-back elements to allow a balanced sharing of unanticipated gains. To avoid a disproportionate burden on small, local projects, such models should be put in place only for projects exceeding a minimum threshold.

- (68) In the culture and heritage conservation sector, a number of measures taken by Member States may not constitute aid because they do not fulfil all the criteria of Article 107(1) of the Treaty, for example because the activity is not economic or because trade between Member States is not affected. To the extent that such measures are covered by Article 107(1) of the Treaty, cultural institutions and projects do not typically give rise to any significant distortion of competition, and case practice has shown that such aid has limited effects on trade. Article 167 of the Treaty recognises the importance of promoting culture for the Union and its Member States and provides that the Union should take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures. Because of the dual nature of culture, being on the one hand an economic good that offers important opportunities for the creation of wealth and employment, and, on the other, a vehicle of identities, values and meanings that mirror and shape our societies, State aid rules should acknowledge the specificities of culture and the economic activities related to it. To clarify the scope of this Regulation, a list of eligible cultural purposes and activities should be established and eligible costs should be specified. The block exemption should cover both investment and operating aid below determined thresholds provided that overcompensation is excluded. In general, this Regulation should not apply to activities which, although they may present a cultural aspect, have a predominantly commercial character because of the higher potential for competition distortions. Therefore, in particular, this Regulation should not apply to press and magazines (written or electronic). Furthermore, the list of eligible cultural purposes and activities should not include commercial activities such as fashion, design or video games.

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<sup>23</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2010) 245 final A Digital Agenda for Europe.

- (69) Audio-visual works play an important role in shaping European identities and reflect the different traditions of Member States and regions. While there is strong competition between films produced outside the Union, there is limited circulation of European films outside their country of origin due to the fragmentation into national or regional markets. The sector is characterised by high investment costs, a perceived lack of profitability due to limited audiences and difficulties to generate additional private funding. Due to these specificities in the audio-visual and film sectors and their economic importance, the Commission has developed specific criteria to assess the necessity, proportionality and adequacy of aid to script-writing, development, production, distribution and promotion of audio-visual works. New criteria were determined in the 2013 Cinema Communication<sup>24</sup> and should be reflected in block exemption rules for aid schemes for audio-visual works. Higher aid intensities are justified for cross-border productions and co-productions which are more likely to be distributed in several Member States.
- (70) Investment aid measures for sport infrastructures should be block exempted if they fulfil the conditions of this Regulation, to the extent they constitute State aid. In the sport sector a number of measures taken by Member States may not constitute State aid because the beneficiary does not carry out an economic activity or because there is no effect on trade between Member States. This could be, under certain circumstances, the case for aid measures which have a purely local character or which are taken in the field of amateur sport. Article 165 of the Treaty recognises the importance of promoting European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function. Aid to infrastructures which serve more than one purpose of recreation and are thus multifunctional should also be block exempted. However, aid to multifunctional tourism infrastructures such as leisure parks and hotel facilities should only be exempted if it is part of regional aid schemes aimed at tourism activities in assisted regions which have a particular positive effect on regional development. The compatibility conditions regarding aid for sport or multifunctional infrastructures should ensure, in particular, open and non-discriminatory access to the infrastructures and a fair process of assignment of concessions to a third party in accordance with the relevant provisions of Union law and the case law of the Union Courts to construct, upgrade and/or operate the infrastructure. If sport infrastructure is used by professional sport clubs, pricing conditions for the use of the infrastructure by these clubs should be made publicly available to ensure transparency and equal treatment of users. The exclusion of overcompensation should be ensured.
- (71) In the light of the Commission's experience in this area, it is in principle necessary to periodically revise State aid policy. That is why the period of application of the present Regulation should be limited. It is therefore appropriate to lay down transitional provisions, including the rules on an adjustment period at the end of validity of the present Regulation for exempted aid schemes. Such rules should give Member States time to adapt to the possibly new regime. The adjustment period should not, however, apply to regional aid schemes, including regional urban development aid schemes, the exemption of which must expire at the date of expiry of the approved regional aid maps and to certain risk finance aid schemes.

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<sup>24</sup> OJ C 332, 15.11.2013, p. 1-11.

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### *Article 1*

#### *Scope*

1. This Regulation shall apply to the following categories of aid:
  - (a) regional aid;
  - (b) aid to SMEs in the form of investment aid, operating aid and SMEs' access to finance;
  - (c) aid for environmental protection;
  - (d) aid for research and development and innovation;
  - (e) training aid;
  - (f) recruitment and employment aid for disadvantaged workers and workers with disabilities;
  - (g) aid to make good the damage caused by certain natural disasters;
  - (h) social aid for transport for residents of remote regions;
  - (i) aid for broadband infrastructures;
  - (j) aid for culture and heritage conservation;
  - (k) aid for sport and multifunctional recreational infrastructures.
2. This Regulation shall not apply to:
  - (a) schemes under sections 1 (with the exception of article 15), 2, 3, 4, 7 (with the exception of article 40), and 10 of this Regulation, for which the annual State aid expenditure exceeds 0,01% of the national gross domestic product (GDP) for the Member State concerned<sup>25</sup>, in so far as the annual State aid expenditure of the scheme in question exceeds EUR 100 million.
  - (b) aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity;
  - (c) aid contingent upon the use of domestic over imported goods.
3. This Regulation shall not apply to:
  - (a) aid granted in the fishery and aquaculture sector, as covered by Council Regulation (EC) No 104/2000<sup>26</sup>; within this sector, however, this Regulation shall apply to training aid, aid for SMEs' access to finance, aid in the field of research and development, innovation aid for SMEs and aid for disadvantaged workers and workers with disabilities;

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<sup>25</sup> Using Eurostat annual data on national GDP in purchasing power standards (PPS) for the second calendar year before the calendar year in question.

<sup>26</sup> OJ L17, 21.1.2000, p. 22.

- (b) aid granted in the sector of primary production of agricultural products; within this sector, however, this Regulation shall apply to the compensation for additional costs other than transport costs in outermost regions under Article 15 (2)(b), risk finance aid, aid for research and development, innovation aid for SMEs, environmental aid, training aid and aid for disadvantaged workers and workers with disabilities;
- (c) aid granted in the sector of processing and marketing of agricultural products, in the following cases:
  - (i) where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or
  - (ii) where the aid is conditional on being partly or entirely passed on to primary producers;
- (d) aid to facilitate the closure of uncompetitive coal mines, as covered by Council Decision no 2010/787<sup>27</sup>;
- (e) categories of regional aid listed in Article 13.

Where an undertaking is active in the sectors referred to in points (a), (b) or (c) of the first subparagraph and in sectors which fall within the scope of this Regulation, this Regulation applies to aid granted in respect of the latter sectors or activities, provided that Member States ensure by appropriate means, such as separation of activities or distinction of costs, that the activities in the excluded sectors do not benefit from the aid granted in accordance with this Regulation.

4. This Regulation shall not apply to:

- (a) aid schemes which do not explicitly exclude the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market, with the exception of aid schemes to make good the damage caused by certain natural disasters;
- (b) ad hoc aid in favour of an undertaking as referred to in point (a);
- (c) aid to undertakings in difficulty, with the exception of aid schemes to make good the damage caused by certain natural disasters.

5. This Regulation shall not apply to State aid measures, which entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law, in particular:

- (a) aid measures where the grant of aid is subject to the obligation for the beneficiary to have its headquarters in the relevant Member State or to be predominantly established in that Member State;
- (b) aid measures where the grant of aid is subject to the obligation for the beneficiary to use nationally produced goods or national services;
- (c) aid measures restricting the possibility for the beneficiaries to exploit the research, development and innovation results in other Member States.

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<sup>27</sup> OJ L 336, 21.12.2010, p. 24.

*Article 2*  
**Definitions**

For the purposes of this Regulation the definitions laid down in Annex I shall apply.

*Article 3*  
**Conditions for exemption**

1. Aid schemes, individual aid granted under aid schemes and ad hoc aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty provided that such aid fulfils all the conditions laid down in Chapter I, as well as the relevant conditions laid down in Chapter III.

*Article 4*  
**Notification thresholds**

1. This Regulation shall not apply to aid which exceeds the following thresholds:
  - (a) regional investment aid: the 'adjusted aid amount', calculated in accordance with the mechanism defined in Annex I, point 35 for an investment with eligible costs of EUR 100 million;
  - (b) regional urban development aid: as laid down in Article 16(3);
  - (c) SME investment aid: EUR 7,5 million per undertaking per investment project;
  - (d) aid for SME participation in fairs: EUR 2 million per undertaking, per project;
  - (e) aid for SMEs' cooperation costs linked to ETC projects: EUR 2 million per undertaking, per project;
  - (f) risk finance aid: as laid down in Article 20(9);
  - (g) aid for start-ups: as laid down in Article 21 (3), (4) and (5);
  - (h) aid for research and development:
    - (i) if the project is predominantly fundamental research: EUR [40] million per undertaking, per project; that is the case when more than half of the eligible costs of the project are incurred through activities which fall within the category of fundamental research;
    - (ii) if the project is predominantly industrial research: EUR [20] million per undertaking, per project; that is the case when more than half of the eligible costs of the project are incurred through activities which fall within the category of industrial research;
    - (iii) if the project is predominantly experimental development: EUR [15] million per undertaking, per project; that is the case when more than half of the eligible costs of the project are incurred through activities which fall within the category of experimental development;
    - (iv) if the project is a EUREKA project or is implemented by a Joint Undertaking established on the basis of Article 185 or of Article 187 of the Treaty, the amounts referred to in points (i) to (iii) are doubled.

- (v) if the aid for research and development projects is granted in the form of repayable advances which, in the absence of an accepted methodology to calculate their gross grant equivalent, are expressed as a percentage of the eligible costs and the measure provides that in case of a successful outcome of the project, as defined on the basis of reasonable and prudent hypothesis, the advances will be repaid with an interest rate at least equal to the discount rate applicable at the time of grant, the amounts referred to in points (i) to (iv) are increased by [50]%;
- (vi) aid for feasibility studies in preparation for research activities: EUR [7.5] million per study;
- (i) investment aid for research infrastructures: EUR [20] million per infrastructure;
- (j) aid for innovation clusters: EUR [7.5] million per cluster;
- (k) innovation aid for SMEs: EUR [5] million per undertaking, per project;
- (l) aid for process and organisational innovation: EUR [7.5] million per beneficiary, per project;
- (m) training aid: EUR 2 million per training project;
- (n) aid for the recruitment of disadvantaged workers: EUR 5 million per undertaking per year;
- (o) aid for the employment of workers with disabilities: EUR 10 million per undertaking per year;
- (p) investment aid for environmental protection, including aid for environmental studies but excluding investment aid for energy efficiency projects, for remediation of contaminated sites and for energy efficient district heating and cooling: EUR [7.5] million per undertaking per investment project;
- (q) aid for energy efficiency projects: as laid down in Article 37 (3);
- (r) investment aid for remediation of contaminated sites and for energy efficient district heating and cooling: EUR [20] million per undertaking per investment project;
- (s) operating aid for the production of renewable electricity: when the aid is granted to renewable electricity installations in sites where the resulting renewable electricity generation capacity per site exceeds [125] MW
- (t) investment aid for culture and heritage conservation: EUR 100 million per project; operating aid for culture and heritage conservation: EUR 50 million per undertaking per year;
- (u) aid schemes for audio-visual works: [20] million per scheme per year;
- (v) aid for sports and multifunctional infrastructures: EUR [15] million or the total costs exceeding EUR [50] million per project.
- (w) aid for broadband infrastructures: EUR 70 million total costs per project.

*Article 5*  
***Transparency of aid***

1. This Regulation shall apply only to transparent aid, that is aid in respect of which it is possible to calculate precisely the gross grant equivalent ex ante without need to undertake a risk assessment.
2. The following categories of aid shall be considered to be transparent:
  - (a) aid comprised in grants and interest rate subsidies;
  - (b) aid comprised in loans, where the gross grant equivalent has been calculated on the basis of the reference rate prevailing at the time of the grant;
  - (c) aid comprised in guarantees:
    - (i) where the gross grant equivalent has been calculated on the basis of safe-harbour premiums laid down in a Commission notice; or
    - (ii) where before the implementation, the methodology to calculate the gross grant equivalent of the guarantee has been accepted on the basis of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (Official Journal C 155 of 20.06.2008, page 10), or any successor notice, following notification of that methodology to the Commission under any regulation adopted by the Commission in the State aid area applicable at the time, and the approved methodology explicitly addresses the type of guarantee and the type of underlying transaction at stake in the context of the application of this Regulation;
  - (d) aid in the form of tax advantages, where the measure provides for a cap ensuring that the applicable threshold is not exceeded;
  - (e) aid comprised in risk finance measures if the conditions laid down in Article 20 are fulfilled;
  - (f) aid for start-ups if the conditions laid down in Article 21 are fulfilled;
  - (g) aid in the form of repayable advances, if the total nominal amount of the repayable advance does not exceed the thresholds applicable under this Regulation or if, before implementation of the measure, the methodology to calculate the gross grant equivalent of the repayable advance has been accepted following its notification to the Commission.

*Article 6*  
***Incentive effect***

1. This Regulation shall apply only to aid which has an incentive effect.
2. Aid shall be considered to have an incentive effect if the beneficiary has submitted a written application for the aid to the Member State concerned before work on the project or activity has started. The application for the aid shall contain at least the following information:
  - (a) undertaking's name and size,
  - (b) description of the project, including its start and end dates
  - (c) location of the project,

- (d) list of eligible costs,
  - (e) aid amount.
3. Ad hoc aid granted to large enterprises shall be considered to have an incentive effect if, in addition to fulfilling the condition laid down in paragraph 2, the Member State has verified, before granting the aid concerned, that documentation prepared by the beneficiary establishes one or more of the following criteria:
- (a) In the case of regional investment aid: that the project would not have been carried out in the area concerned or would not have been sufficiently profitable for the beneficiary in the area concerned in the absence of the aid.
  - (b) In all other cases:
    - (a) a material increase in the scope of the project/activity due to the aid;
    - (b) a material increase in the total amount spent by the beneficiary on the project/activity due to the aid;
    - (c) a material increase in the speed of completion of the project/activity concerned;
4. By derogation from paragraph 2 and 3, measures in the form of tax advantages are deemed to have an incentive effect if the following conditions are fulfilled:
- (a) the measure in the form of tax advantages establishes a right to aid in accordance with objective criteria and without further exercise of discretion by the Member State; and
  - (b) the measure in the form of tax advantages has been adopted and in force before work on the aided project or activity has started, this requirement shall not apply, however, in the case of fiscal successor schemes provided the activity was already covered by the previous schemes in the form of tax advantages.
5. By derogation from paragraph 2 to 4, the following categories of aid are not required to have or shall be presumed to have an incentive effect if the conditions laid down in the relevant specific provisions in Chapter III are fulfilled:
- (a) regional operating aid in accordance with Article 15,
  - (b) aid for SMEs' access to finance, in accordance with Articles 20 and 21,
  - (c) aid for the recruitment of disadvantaged workers in the form of wage subsidies and aid for the employment of workers with disabilities in the form of wage subsidies, in accordance with Articles 31 and 32,
  - (d) aid compensating for the additional costs of employing workers with disabilities, in accordance with Article 33;
  - (e) aid in the form of reductions in environmental taxes under Directive 2003/96/EC, in accordance with Article 40;
  - (f) aid to make good the damage caused by certain natural disasters in accordance with Article 44;
  - (g) social aid for transport for residents of remote regions in accordance with Article 45;
  - (h) aid for culture and heritage conservation in accordance with Article 47.

*Article 7*  
***Aid intensity and eligible costs***

1. For the purposes of calculating aid intensity and eligible costs, all figures used shall be taken before any deduction of tax or other charge. The eligible costs shall be supported by documentary evidence which shall be clear, specific and contemporary.
2. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.
3. Aid payable in several instalments shall be discounted to its value at the moment of granting. The eligible costs shall be discounted to their value at the moment of granting. The interest rate to be used for discounting purposes shall be the discount rate applicable at the time of grant.
4. Where aid is granted by means of tax advantages, discounting of aid tranches shall take place on the basis of the discount rates applicable when a tax advantage takes effect.
5. Where aid is granted in the form of repayable advances which, in the absence of an accepted methodology to calculate their gross grant equivalent, are expressed as a percentage of the eligible costs and the measure provides that in case of a successful outcome of the project, as defined on the basis of reasonable and prudent hypothesis, the advances will be repaid with an interest rate at least equal to the discount rate applicable at the time of grant, the maximum aid intensities laid down in Chapter III may be increased by [10] percentage points.
6. Where regional aid is granted in the form of repayable advances, the maximum aid intensities established in a regional aid map in force at the moment of granting the aid may not be increased.

*Article 8*  
***Cumulation***

1. In determining whether the individual notification thresholds established in Article 4 and the maximum aid intensities established in Chapter III are respected, the total amount of State aid for the aided activity or project or undertaking shall be taken into account.
2. Union funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the Union that is not directly or indirectly under the control of the Member State does not constitute State aid. Where such Union funding is combined with State aid, only the latter shall be considered for determining whether notification thresholds and maximum aid intensities or maximum aid amounts are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate laid down in the applicable rules of Union law.
3. Aid with identifiable eligible costs exempted by this Regulation may be cumulated with:
  - (a) any other State aid, as long as those measures concern different identifiable eligible costs,

- (b) any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation.
4. Aid without identifiable eligible costs exempted under Articles 20, 21 and 22 of this Regulation may be cumulated with any other State aid measure with identifiable eligible costs. Aid without identifiable eligible costs may be cumulated with other State aid without identifiable eligible costs, up to the highest relevant total financing threshold fixed in the specific circumstances of each case by this or another block exemption regulation or decision adopted by the Commission.
  5. State aid exempted under this Regulation shall not be cumulated with any de minimis aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding those laid down in Chapter III of this Regulation.
  6. By way of derogation from paragraph 3(b), aid in favor of workers with disabilities, as provided for in Articles 32 and 33 may be cumulated with aid exempted under this Regulation in relation to the same eligible costs above the highest applicable threshold under this Regulation, provided that such cumulation does not result in an aid intensity exceeding 100% of the relevant costs over any period for which the workers concerned are employed.

#### *Article 9*

#### ***Publication and information***

1. The Member State concerned shall publish on a comprehensive State aid website, at national or regional level:
  - (a) the summary information about each aid measure exempt under this Regulation in the standardised format laid down in Annex III;
  - (b) the full text of each aid measure, including its amendments, or a link providing access to it;
  - (c) the information on each individual aid award exceeding EUR 200 000 in the standardised format laid down in Part III of Annex III.
2. As regards aid awarded under Articles 14(14) and 19 of the present Regulation – the information referred to in paragraph 1 above shall be placed on the website of the Member State in which the Managing Authority concerned, as defined in Article 20 of Regulation [COM(2011)611 ERDF/ETC], is located.
3. For schemes in the form of tax advantages, and for schemes under Article 20 of the present Regulation, the conditions set out in paragraph 1(c) shall be considered fulfilled if Member States publish the required information on individual aid amounts [by range of EUR 2 million].
4. The information mentioned in paragraph 1(c) shall be organised and accessible in a standardized manner, as described in Annex IV, and shall allow for effective search and download functions. The information referred to in paragraph 1 shall be up to date and available for at least 10 years from the date on which the aid was granted.
5. The full text of the scheme or of the ad hoc measure referred to in paragraph 1 shall include, in particular, an explicit reference to this Regulation, by citing its title and publication reference in the Official Journal of the European Union and to the specific provisions of Chapter III concerning that act, or where applicable, to the

national law which ensures that the relevant provisions of this Regulation are complied with. It shall be accompanied by its implementing provisions and its amendments.

6. The Commission shall publish on its website:
  - (a) the links to the State aid websites of all Member States, referred to in paragraph 1;
  - (b) the summary information referred to in point (a) of paragraph 1.

## CHAPTER II

### Procedural requirements

#### *Article 10*

#### ***Withdrawal of the benefit of the block exemption***

Where the Member State concerned grants aid allegedly exempted from the notification requirement under this Regulation without fulfilling the conditions set out in this Chapter and in Chapter III or fails to meet the requirements set out in Chapter II, the Commission may, after having provided the Member State concerned with the possibility to make its views known, adopt a decision stating that all or some of the future aid measures which would otherwise fulfil the requirements of this Regulation adopted by the Member State concerned are to be notified to the Commission in accordance with Article 108(3) of the Treaty. The measures to be notified may be limited to the measures adopted in favour of certain types of aid or certain beneficiaries or aid measures adopted by certain authorities of the Member State concerned.

#### *Article 11*

#### ***Reporting***

Member States, or in case of aid awarded under Articles 14(14) and 19 of this Regulation Managing Authorities, as defined in Article 20 of Regulation [COM(2011)611 ERDF/ETC], shall transmit to the Commission:

- (a) via the Commission's electronic notification system<sup>28</sup>, the summary information referred to in Article 9(1)(a), together with a link providing access to the full text of the aid measure as referred to in Article 9 (1)(b), within 20 working days following its entry into force;
- (b) an annual report, as referred to in Chapter III of Commission Regulation (EC) No 794/2004 of 21 April 2004<sup>29</sup>, in electronic form on the application of the present Regulation, containing the information indicated in Annex III to the present Regulation, in respect of each whole year or each part of the year during which the present Regulation applies.

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<sup>28</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, Article 3(4); OJ L 140, 1.4.2004, p.1.

<sup>29</sup> OJ L 140, 30.04.2004, p.1.

*Article 12*  
**Monitoring**

In order to enable the Commission to monitor the aid exempted from notification by this Regulation, Member States, and in case of aid awarded under Articles 14(14) and 19 of this Regulation - Managing Authorities, shall maintain detailed records with the information and supporting documentation necessary to establish that all the conditions laid down in this Regulation are fulfilled. Such records shall be kept for 10 years from the date on which the individual aid was granted or the last aid was granted under the schemes. The Member State concerned, or the Managing Authority as referred to above, shall provide the Commission within a period of 20 working days or such longer period as may be fixed in the request, with all the information and supporting documentation which the Commission considers necessary to monitor the application of this Regulation.

**CHAPTER III**  
**Specific Provisions for the Different Categories of Aid**

**SECTION 1 - REGIONAL AID**

**Subsection A – Regional Investment and operating aid**

*Article 13*  
**Scope of regional aid**

1. This Regulation shall not apply to:
  - (a) regional aid which favours activities in the steel sector, the coal sector, the shipbuilding sector, the synthetic fibres sector, the transport sector, the energy sector;
  - (b) regional aid in the form of schemes which are targeted at specific sectors of economic activity within the meaning of this Regulation; schemes aimed at tourism activities, broadband infrastructures or processing and marketing of agricultural products are not considered to be targeted at specific sectors of economic activity;
  - (c) regional aid in the form of schemes which compensate the transport costs of goods produced in the outermost regions or in sparsely populated areas and:
    - (i) favour activities in the production, processing and marketing of products listed in Annex I to the Treaty; or
    - (ii) favour activities classified as agriculture, forestry and fishing under section A of the NACE Rev. 2, mining and quarrying under section B of the NACE Rev. 2 and electricity, gas, steam and air conditioning supply under section D of the NACE Rev. 2; or
    - (iii) favour transport of goods by pipeline;
  - (d) individual regional investment aid to a beneficiary that has closed down the same or a similar activity in the EEA in the two years preceding its application for regional investment aid or which, at the moment of the aid application, has concrete plans to close down such an activity within a period of up to two years

after the initial investment for which aid is requested is completed in the area concerned.

- (e) Regional operating aid awarded to undertakings whose principal activity falls under Section K "Financial and insurance activities" of the NACE Rev. 2 statistical classification of economic activities<sup>30</sup> or to undertakings that perform intra-group activities whose principal activities falls under classes 70.10 "Activities of head offices" or 70.22 "Business and other management consultancy activities" of NACE Rev. 2.

#### *Article 14*

#### ***Regional investment aid***

1. Regional investment aid measures shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The aid shall be granted in assisted areas.
3. In assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty, the aid may be granted for an initial investment within the meaning of this Regulation, regardless of the size of the beneficiary. In assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, the aid may be granted to SMEs for any form of such an initial investment, whereas aid to large enterprises shall only be granted for an initial investment in favour of new economic activity, within the meaning of this Regulation, in the area concerned.
4. The eligible costs shall be the following:
  - (a) investment costs in tangible and intangible assets;
  - (b) the estimated wage costs arising from job creation as a result of an initial investment, calculated over a period of two years; or
  - (c) a combination of points (a) and (b) not exceeding the amount of (a) or (b), whichever is higher.
5. The investment shall be maintained in the recipient area for at least five years, or three years in the case of SMEs, after the completion of the investment. This shall not prevent the replacement of plant or equipment that has become out-dated or broken within this period, provided that the economic activity is retained in the area concerned for the above mentioned minimum period.
6. The assets acquired must be new except for SMEs and for the acquisition of an establishment. Costs related to the lease of tangible assets shall fulfil the following conditions:
  - (a) for land and buildings, the lease must continue for at least five years after the expected date of completion of the investment project for large undertakings or three years in the case of SMEs;

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<sup>30</sup> Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains, OJ L 393, 30.12.2006. 1.

- (b) for plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the beneficiary of the aid to purchase the asset at the expiry of the term of the lease.

In the case of acquisition of the assets of an establishment within the meaning of Annex I, point 40, only the costs of buying the assets from third parties unrelated to the buyer shall be taken into consideration. The transaction shall take place under market conditions. If aid has already been granted for the acquisition of assets prior to their purchase, the costs of those assets shall be deducted from the eligible costs related to the acquisition of an establishment. In the case of business succession of a small enterprise in favour of family of the original owner(s) or in favour of former employees, the condition that the assets shall be bought from third parties unrelated to the buyer shall be waived. The acquisition of shares does not constitute initial investment.

- 7. For aid granted for a fundamental change in the production process, the eligible costs must exceed the depreciation of the assets linked to the activity to be modernised in the course of the preceding three fiscal years. For aid granted for a diversification of an existing establishment, the eligible costs must exceed by at least 200% the book value of the assets that are reused, as registered in the fiscal year preceding the start of works.
- 8. Intangible assets must fulfil the following conditions:
  - (a) They must be used exclusively in the establishment receiving the aid;
  - (b) They must be amortisable;
  - (c) They must be purchased under market conditions from third parties unrelated to the buyer; and
  - (d) They must be included in the assets of the undertaking receiving the aid and must remain associated with the project for which the aid is awarded for at least five years or three years in the case of SMEs.
  - (e) For large undertakings, costs of intangible assets are eligible only up to a limit of 50% of the total eligible investment costs for the initial investment.
- 9. When eligible costs are calculated by reference to the estimated wage costs as described in paragraph 4 (b) of this article, the following conditions shall be fulfilled:
  - (a) the investment project shall lead to a net increase in the number of employees in the establishment concerned, compared with the average over the previous 12 months after deducting from the apparent created number of jobs any job lost during that period,
  - (b) each posts shall be filled-in within three years of completion of works; and
  - (c) each job created through the investment shall be maintained in the area concerned for a period of five years from the date the post was first filled in or three years in the case of SMEs.
- 10. Regional aid for broadband network development shall fulfil the following conditions:
  - (a) aid shall be granted only to areas where there is no network of the same category (either basic broadband or NGA) and where no such network is likely

to be developed on commercial terms within three years from the decision to grant the aid; and

(b) the subsidised network operator must offer active and passive wholesale access under fair and non-discriminatory conditions including physical unbundling in the case of NGA networks; and

(c) aid shall be allocated on the basis of a competitive selection process.

Regional aid for research infrastructures shall be granted only if the aid is made conditional on giving transparent and non-discriminatory access to this infrastructure.

11. The aid intensity in gross grant equivalent shall not exceed the maximum aid intensity established in the regional aid map which is in force at the time the aid is granted in the area concerned. Where the aid intensity is calculated on the basis of paragraph 4 (c) of this Article, the maximum aid intensity shall not exceed the most favourable amount resulting from the application of that intensity on the basis of investment costs or wage costs. For large investment projects the aid shall not exceed the adjusted aid calculated in accordance with the mechanism defined in Annex I, point 35;
12. Any initial investment started by the same beneficiary (at group level) in a period of three years from the date of start of works on another aided investment in the same NUTS 3 region shall be considered to be part of a single investment project. Where such single investment project is a large investment project, the total aid for the single investment project shall not exceed the maximum aid for large investment projects.
13. The aid beneficiary must provide a financial contribution of at least 25% of the eligible costs, either through its own resources or by external financing, in a form, which is free of any public support. However, where the maximum aid intensity for an investment of an SME in an outermost region exceeds 75%, the financial contribution of the beneficiary may be reduced by the percentage points exceeding 75%.
14. For an initial investment linked to European Territorial Cooperation projects covered by Regulation of the European Parliament and of the Council on specific provisions for the support of the European Regional Development Fund to the European territorial cooperation goal [Commission proposal COM(2011)611 ERDF/ETC Regulation], the aid intensity of the area in which the initial investment is located shall apply to all beneficiaries participating in the project. If the initial investment is located in two or more assisted areas, the maximum aid intensity shall be the one applicable in the assisted area where the highest amount of eligible costs is incurred. In assisted areas eligible for aid under Article 107(3)(c) of the Treaty, this provision shall apply to large undertakings only if the initial investments concerns a new economic activity.

*Article 15*  
**Regional operating aid**

1. Regional operating aid schemes in outermost regions and sparsely populated areas<sup>31</sup> shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The regional operating aid schemes shall compensate for:
  - (a) the additional transport costs of goods which have been produced in areas eligible for operating aid, under the following conditions:
    - the beneficiaries have their production activity in those areas;
    - the aid is objectively quantifiable in advance on the basis of a fixed sum or per ton/kilometre ratio or any other relevant unit;
    - the additional transport costs are calculated on the basis of the journey of the goods produced in the eligible area from the point of origin to the point of the destination within the Member State concerned using the means of transport which results in the lowest costs for the beneficiary, taking into account the external costs to the environment.
    - for outermost regions, the eligible additional transport costs may include the costs of transporting primary commodities, raw materials or intermediate products from the place of their production to locations in outermost areas where they are further processed.
  - (b) additional operating costs other than transport costs, incurred in outermost regions as a direct effect of one or several of the permanent handicaps referred to in article 349 of the TFEU, provided that:
    - the beneficiaries have their economic activity in an outermost region;
    - the annual aid amount per beneficiary does not exceed the lowest of the following amounts:
      - 15% of the gross value added annually created by the beneficiary in the outermost region concerned;
      - 25% of the annual labour costs incurred by the beneficiary in the outermost region concerned.
3. The aid intensity shall not exceed 100% of the eligible additional costs referred to in this Article.

**Subsection B – Urban development aid**

*Article 16*  
**Regional urban development aid**

1. Urban development aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification

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<sup>31</sup> As designated by the Member States within their regional aid map in accordance with paragraph 161 of the Guidelines on regional State aid for 2014-2020, OJ C 209; 23.07.2013, p. 1.

requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. In order to be eligible for aid under the present article, urban development projects shall fulfil the following criteria:
  - (a) they are implemented via urban development funds in assisted areas;
  - (b) they are co-financed by the EU Structural and Investment Funds;
  - (c) they support the implementation of an integrated approach for sustainable urban development;
3. The total investment into an urban development project under any urban development aid measure shall not exceed EUR [20] million.
4. The eligible costs shall be the overall costs of the urban development project to the extent that they comply with Article [ of the Common Provisions Regulation].
5. The urban development aid granted by the urban development fund to the eligible urban development projects may take the form of equity, quasi-equity, loans, guarantees, or a mix thereof.
6. The urban development aid shall leverage additional investment from private investors at the level of the urban development funds or the urban development projects, so as to achieve an aggregate amount reaching minimum 30% of the total financing provided to an urban development project.
7. Private and public investors may provide cash or in-kind contribution or a combination of those for the implementation of the urban development project. In-kind contribution shall be taken into account at its market value, as certified by an independent qualified expert or duly authorised official body.
8. The urban development fund shall ensure that the following conditions are fulfilled:
  - (a) urban development fund managers shall be selected through an open, transparent and non-discriminatory procedure in accordance with applicable Union and national laws. In particular, there shall be no discrimination between urban development fund managers on the basis of their place of establishment or incorporation in any Member State. Urban development fund managers may be required to fulfil predefined criteria objectively justified by the nature of the investments;
  - (b) the private investors shall be selected through an open, transparent and non-discriminatory call in accordance with applicable Union and national laws aimed at establishing the appropriate risk-reward sharing arrangements whereby asymmetric profit-sharing shall be given preference over downside protection. If the private investors are not selected by such a call, the Fair Rate of Return to the private investors shall be established by an independent expert selected via an open, transparent and non-discriminatory call;
  - (c) in the case of asymmetrical loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at [25%] of its total investment;
  - (d) in the case of guarantees to private investors in urban development projects, the guarantee rate shall be limited to [80]% and total losses assumed by a Member State shall be capped at [25]% of the underlying guaranteed portfolio;

- (e) the investors shall be allowed to be represented in the governance bodies of the urban development fund, such as the supervisory board or the advisory committee;
  - (f) the urban development fund shall be established according to the applicable laws and a due diligence process shall take place to ensure a commercially sound investment strategy;
9. Urban development funds shall be managed on a commercial basis and shall ensure profit-driven financing decisions. This is considered to be the case when the managers of the urban development fulfill the following conditions:
- (a) the managers of the urban development fund shall be obliged by law or contract to act with the diligence of a professional manager in good faith and avoiding conflicts of interest; best practices and regulatory supervision shall apply;
  - (b) the remuneration of the managers of the urban development fund shall conform to market practices. This requirement is presumed to be met where the manager is selected through an open, transparent and non-discriminatory competitive call, based on objective criteria linked to experience, expertise and operational and financial capacity;
  - (c) the managers of the urban development fund shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources so as to ensure that their interests are permanently aligned with the interests of the public investor;
  - (d) the managers of the urban development fund shall set out an investment strategy, criteria and the proposed timing of investments in urban development projects, establishing the ex-ante financial viability and their expected impact on urban development;
  - (e) a clear and realistic exit strategy shall exist for each urban development project;
10. An urban development aid measure providing loans or guarantees to urban development projects, shall fulfil the following conditions:
- (a) in case of loans, the nominal amount of the loan is taken into account in calculating the maximum investment amount for the purposes of paragraph 3 of this Article;
  - (b) in case of guarantees, the nominal amount of the underlying repayable investment is taken into account in calculating the maximum investment amount for the purposes of paragraph 3 of this Article. Only guarantees covering the expected losses of the underlying guaranteed portfolio can be provided for free. If a guarantee also comprises coverage of unexpected losses, the urban development fund shall pay, for the part of the guarantee covering unexpected losses, a market-conform guarantee premium.

## SECTION 2 – AID FOR SMES

### *Article 17*

#### *SME investment aid*

1. Investment aid to SMEs operating inside or outside the territory of the European Union shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The eligible costs shall be the following:
  - (a) the costs of investment in tangible and intangible assets; or
  - (b) the estimated wage costs of employment directly created by the investment project, calculated over a period of two years.
3. In order to be considered an eligible cost for the purposes of this Regulation, an investment shall consist of the following:
  - (a) an investment in tangible and/or intangible assets relating to the setting-up of a new establishment, the extension of an existing establishment, diversification of the output of an establishment into new additional products or a fundamental change in the overall production process of an existing establishment; or
  - (b) the acquisition of the capital assets directly linked to an establishment, where the establishment has closed or would have closed had it not been purchased, and the assets are bought from third parties unrelated to the buyer. The transaction shall take place under market conditions.

In the case of business succession of a small enterprise in favour of family of the original owner(s) or in favour of former employees, the condition that the assets shall be bought from third parties unrelated to the buyer shall be waived. The sole acquisition of the shares of an undertaking shall not constitute investment.
4. Intangible assets shall fulfill the following conditions:
  - (a) they must be used exclusively in the establishment receiving the aid; and
  - (b) they must be regarded as amortizable assets; and
  - (c) they must be purchased under market conditions from third parties unrelated to the buyer; and
  - (d) they must be included in the assets of the undertaking for at least three years;
5. Employment directly created by an investment project shall fulfill the following conditions:
  - (a) employment shall be created within three years of completion of the investment;
  - (b) the investment project shall lead to a net increase in the number of employees in the establishment concerned, compared with the average over the previous 12 months;
  - (c) the employment created shall be maintained during a minimum period of three years from the date the post was first filled.

6. The aid intensity shall not exceed:
  - (a) 20% of the eligible costs in the case of small enterprises;
  - (b) 10% of the eligible costs in the case of medium-sized enterprises.

#### *Article 18*

#### ***Aid for SME participation in fairs***

1. Aid to SMEs for participation in fairs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The eligible costs shall be the costs incurred for renting, setting up and running the stand for the first participation of an undertaking in any particular fair or exhibition.
3. The aid intensity shall not exceed 50 % of the eligible costs.

#### *Article 19*

#### ***Aid for SMEs' cooperation costs linked to ETC projects***

1. Aid for cooperation costs incurred by SMEs participating in the European Territorial Cooperation projects covered by Regulation [COM(2011)611 ERDF/ETC] shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. The following costs shall be eligible:
  - (a) costs for organisational cooperation including cost for staff and offices to the extent that it is linked to the cooperation project;
  - (b) costs of advisory and support services linked to cooperation and delivered by outside consultants and service providers;
  - (c) travel expenses, costs of equipment and investment expenditure directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the project.
3. The services referred to in paragraph 2 (b) above shall not be a continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or advertising.
4. The aid amount shall not exceed 50% of the eligible costs.

### **SECTION 3 - AID FOR ACCESS TO FINANCE FOR SMEs**

#### *Article 20*

#### **Risk finance aid**

1. Risk finance aid schemes in favour of SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2. At the level of the financial intermediaries, the risk finance aid to independent private investors may take the forms of:
  - (a) equity or quasi-equity, or financial endowment to provide risk finance investments directly or indirectly to eligible undertakings; or
  - (b) loans to provide risk finance investments directly or indirectly to eligible undertakings; or
  - (c) guarantees to cover losses from risk finance investments directly or indirectly to eligible undertakings.
3. At the level of the independent private investors, risk finance aid may take the forms mentioned in paragraph 2 of this Article, or tax incentives in so far as the private investors are natural persons providing risk finance directly or indirectly to eligible undertakings.
4. At the level of the eligible undertakings, the risk finance aid may take the form of equity, quasi-equity investments, loans, guarantees, or a mix thereof.
5. Eligible undertakings shall be undertakings which at the time of the initial risk finance investment are unlisted SMEs and fulfill one of the following conditions:
  - (a) they have not been operating in any market;
  - (b) they have been operating in any market for less than 7 years following their first commercial sale;
  - (c) they require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of their average annual turnover in the preceding 5 years.
6. The risk finance aid may also cover follow-on investments made in eligible undertakings, including after the 7-year period mentioned in paragraph 5(b) of this Article, if the following cumulative conditions are fulfilled:
  - (a) the total amount of risk finance mentioned in paragraph 9 is not exceeded;
  - (b) the follow-on investments were foreseen in the original business plan;
  - (c) the undertaking receiving follow-on investments has not become linked, within the meaning of Article 3 of Annex II, with another undertaking other than the financial intermediary or the independent private investor providing risk finance under the measure, unless the new entity fulfils the conditions of the SME definition within the meaning of Annex II.
7. For equity and quasi-equity investments in eligible undertakings, the risk finance measure may provide support for replacement capital only if the latter is combined with new capital representing at least [50]% of each investment round into the eligible undertakings.
8. For equity and quasi-equity investments falling under paragraph 2(a) of this Article, no more than 30% of the financial intermediary's aggregate capital contributions and uncalled committed capital may be used for liquidity management purposes.
9. The total amount of risk finance referred to in paragraph 4 of this Article shall not exceed EUR 15 million per eligible undertaking under any risk finance measure.
10. For risk finance measures providing equity, quasi-equity or loan investments to eligible undertakings, the risk finance measure shall leverage additional finance from

independent private investors at the level of the financial intermediaries or the eligible undertakings, so as to achieve an aggregate private participation rate reaching the following minimum thresholds:

- (a) [10%] of the risk finance provided to the eligible undertakings prior to their first commercial sale on any market;
  - (b) [40%] of the risk finance provided to the eligible undertakings referred to in paragraph 5 (b) of this Article;
  - (c) [60%] of the risk finance for investment provided to eligible undertakings mentioned in paragraph 5, letter (c) of this Article and for follow-on investments in eligible undertakings after the 7-year period mentioned in paragraph 5, letter (b) of this Article.
11. In case the risk finance measure is designed to target eligible undertakings at different development stages as referred to in paragraph 10, letters (a) to (c) of this Article, the measure shall achieve an aggregate private participation rate that represents at least:
  - (a) 40% where the underlying portfolio includes investments in undertakings as referred to in paragraph 10, letter (a) of this Article; or
  - (b) a weighted average that would result from the application of the minimum participation rates to individual investments in the underlying portfolio, as referred to in paragraph 10, letters (a) to (c) of this Article.
12. The risk finance measure shall not discriminate between financial intermediaries on the basis of their place of establishment or incorporation in any Member State. Financial intermediaries may be required to fulfill predefined criteria objectively justified by the nature of the investments.
13. The risk finance measure shall fulfill the following conditions:
  - (a) it shall be implemented via one or more financial intermediaries, except for fiscal incentives to private investors in respect of their direct investments into eligible undertakings;
  - (b) financial intermediaries, as well as investors or fund managers shall be selected through an open, transparent and non-discriminatory call which is made in accordance with applicable Union and national laws and aimed at establishing appropriate risk-reward sharing arrangements whereby, for investments other than guarantees, asymmetric profit sharing shall be given preference over downside protection;
  - (c) in the case of asymmetrical loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at [25%] of the total investment;
  - (d) in the case of guarantees falling under point (c) of paragraph 2, the guarantee rate shall be limited to [80]% and total losses assumed by a Member State shall be capped at [25]% of the underlying guaranteed portfolio. Only guarantees covering the expected losses of the underlying guaranteed portfolio can be provided for free. If a guarantee also comprises coverage of unexpected losses, the financial intermediary shall pay, for the part of the guarantee covering unexpected losses, a market-conform guarantee premium.

14. The following conditions shall be fulfilled in order to ensure profit-driven financing decisions:
- (a) the financial intermediary shall be established according to the applicable laws and a due diligence process shall take place to ensure a commercially sound investment strategy, including an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of its portfolio of investments; and
  - (b) risk finance provided to the eligible undertakings shall be based on a viable business plan, containing details of product, sales and profitability development, establishing ex-ante financial viability; and
  - (c) a clear and realistic exit strategy shall exist for each equity and quasi-equity investment.
15. Financial intermediaries shall be managed on a commercial basis. This requirement is considered to be fulfilled when the financial intermediary and, depending on the type of risk finance measure, the fund manager, fulfil the following conditions:
- (a) they shall be obliged by law or contract to act with the diligence of a professional manager in good faith and avoiding conflicts of interest; best practices and regulatory supervision shall apply;
  - (b) their remuneration shall conform to market practices. This requirement is presumed to be met when the manager or the financial intermediary is selected through an open, transparent and non-discriminatory competitive call, based on objective criteria linked to experience, expertise and operational and financial capacity;
  - (c) they shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources so as to ensure that their interests are permanently aligned with the interests of the public investor;
  - (d) they shall set out an investment strategy, criteria and the proposed timing of investments;
  - (e) investors shall be allowed to be represented in the governance bodies of the investment fund, such as the supervisory board or the advisory committee.
16. A risk finance measure providing guarantees or loans to eligible undertakings, shall fulfil the following conditions:
- (a) as a result of the measure, the financial intermediary shall undertake investments that would not have been carried out or would have been carried out in a restricted or different manner without the aid. The financial intermediary shall be able to demonstrate that it operates a mechanism that ensures that all the advantages are passed on to the largest extent to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates;
  - (b) in the case of loans, the nominal amount of the loan is taken into account in calculating the maximum investment amount for the purposes of paragraph 9 of this Article;
  - (c) in the case of guarantees, the nominal amount of the underlying guaranteed loan is taken into account in calculating the maximum investment amount for

the purposes of paragraph 9 of this Article. The guarantee shall not exceed 80% of the underlying loan.

17. The Member State may entrust the implementation of the risk finance measure to an entrusted entity.
18. Risk finance aid for SMEs that do not fulfil the conditions laid down in paragraph 5 shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that
  - (a) at the level of the SMEs, the aid fulfils the conditions laid down in Regulation [replacing Regulation (EC) No 1998/2006]; and
  - (b) all the conditions laid down in the present Article, with the exception of those set out in paragraphs 5, 6, 9, 10, and 11, are fulfilled; and
  - (c) for risk finance measures providing equity, quasi-equity or loan investments to eligible undertakings, the measure shall leverage additional finance from independent private investors at the level of the financial intermediaries or the SMEs, so as to achieve an aggregate private participation rate reaching at least [60%] of the risk finance provided to the SMEs.

*Article 21*  
***Aid for start-ups***

1. Start-up aid schemes shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. Eligible undertakings shall be unlisted enterprises up to five years following their registration, which have not yet distributed profits and have not been formed through a merger and which are:
  - (a) small enterprises; or
  - (b) small and innovative enterprises, within the meaning of this Regulation.
3. Start-up aid shall take the form of:
  - (a) loans with interest rates, which are not conform with market conditions, with a duration of 10 years duration and up to a maximum nominal amount of EUR [1] million, or EUR [1.5] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, or EUR [2] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty. For loans with a duration comprised between 5 and 10 years the maximum amounts may be adjusted by multiplying the amounts above by the ratio between 10 years and the actual duration of the loan. For loans with a duration of less than 5 years, the maximum amount shall be the same as for loans with a duration of 5 years;
  - (b) guarantees with premiums which are not conform with market conditions, with a duration of 10 years duration and up to maximum EUR [1.5] million nominal guaranteed loan amount, or EUR [2.25] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, or EUR [3] million for undertakings established in assisted areas fulfilling the

conditions of Article 107(3)(a) of the Treaty. For guarantees with a duration comprised between 5 and 10 years the maximum guaranteed loan amounts may be adjusted by multiplying the amounts above by the ratio between 10 years and the actual duration of the guarantee. For guarantees with a duration of less than 5 years, the maximum amount shall be the same as for guarantees with a duration of 5 years. The guarantee should not exceed 80% of the underlying loan.

- (c) grants, including equity or quasi equity investment, interests rate and guarantee premium reduction up to EUR [0.4] million gross grant equivalent or EUR [0.6] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, or EUR [0.8] million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty.
4. A beneficiary can receive support through a mix of the aid instruments mentioned paragraph 3, letters (a) to (c) of this Article, provided that the proportion of the amount granted through one aid instrument, calculated on the basis of the maximum aid amount allowed for that instrument, is taken into account in order to determine the residual proportion of the maximum aid amount allowed for the other instruments forming part of such a mixed instrument.
5. For small and innovative enterprises, the maximum amounts set out in paragraph 3 may be doubled.

#### *Article 22*

##### ***Aid to alternative trading platforms specialised in SMEs***

1. Aid in favour of alternative trading platforms specialised in SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. Where the platform operator is a small enterprise, the aid measure may take the form of start-up aid to the platform operator, in which case the conditions laid down in Article 21 shall apply.

The aid measure may take the form of tax incentives to independent private investors that are natural persons in respect of their risk finance investments made through an alternative trading platform into undertakings eligible under the conditions laid down in Article 20.

#### *Article 23*

##### ***Aid for scouting costs***

1. Aid covering part of scouting costs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. The aid intensity shall not exceed [50]% of the eligible costs.

3. The eligible costs shall be the costs for initial screening and formal due diligence undertaken by managers of financial intermediaries or investors to identify eligible undertakings pursuant to Articles 20 and 21.
4. Aid may take the form of a grant.

## **SECTION 4 – AID FOR RESEARCH AND DEVELOPMENT AND INNOVATION**

### *Article 24*

#### *Aid for research and development projects*

1. Aid for research and development projects shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The aided part of the research and development project shall completely fall within one or more of the following categories:
  - (a) fundamental research;
  - (b) industrial research;
  - (c) experimental development;
  - (d) feasibility studies.
3. The eligible costs shall be allocated to a specific category of research and development and shall be the following:
  - (a) personnel costs (researchers, technicians and other supporting staff to the extent employed on the project);
  - (b) costs of instruments, equipment, buildings and land to the extent and for the period used for the project;
  - (c) cost of contractual research, technical knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project;
  - (d) additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project;
4. Where an aided project results in commercially usable prototypes or pilots, the net revenues directly attributable to their subsequent commercial use within five years of completion of the project must be deducted from the eligible costs. Such deduction can take place either *ex ante*, by taking into account the discounted value of net revenues that can reasonably be expected at the date of granting of the aid, or *ex post*, by clawing back the discounted value of the actual amount of net revenues earned by the aid beneficiary during those five years.
5. The eligible costs for feasibility studies shall be the costs of the study.
6. The aid intensity for each beneficiary shall not exceed:
  - (a) 100% of the eligible costs for fundamental research;
  - (b) [50]% of the eligible costs for industrial research;

- (c) [25]% of the eligible costs for experimental development;
  - (d) [50]% of the eligible costs for feasibility studies.
7. The aid intensities for industrial research and experimental development may be increased up to a maximum aid intensity of 80% of the eligible costs as follows:
- (a) by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises;
  - (b) by 15 percentage points if:
    - (i) the project involves effective collaboration and the project involves at least one SME or is carried out in at least two Member States and no single undertaking bears more than 70% of the eligible costs, or at least one research and knowledge-dissemination organisation is involved, which bears solely or together with other such organisations at least 10% of the eligible costs and has the right to publish the own research results; or
    - (ii) the results of the project are widely disseminated through conferences, publication, open access repositories, or free or open source software;

#### *Article 25*

#### ***Investment aid for research infrastructures***

1. Aid for the construction or upgrade of research infrastructures that perform economic activities shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. When a research infrastructure pursues both economic and non-economic activities, their respective financing, costs and revenues must be accounted for separately on the basis of consistently applied and objectively justifiable cost accounting principles.
3. The price charged for the operation or use of the infrastructure shall correspond to a market price.
4. Access to the infrastructure shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least [30]% of the investment costs of the infrastructure may be granted preferential access with more favourable conditions, provided such access is proportional to the undertaking's contribution to the investment costs to avoid overcompensation and these conditions are made publicly available.
5. The eligible costs shall be the investment costs in intangible and tangible assets.
6. The aid intensity shall not exceed [50]% of the eligible costs.
7. When a research infrastructure receives public funding for both economic and non-economic activities, Member States shall put in place a monitoring and claw-back mechanism in order to ensure that the applicable aid intensity is not exceeded as a result of an increase of the share of economic activities in comparison with the situation expected at the date of award of the aid.

*Article 26*  
***Aid for innovation clusters***

1. Aid for innovation clusters shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. Aid for innovation clusters shall be granted exclusively to the legal entity operating the innovation cluster (cluster organisation).
3. Access shall be open to several users and be granted on transparent and non-discriminatory basis.
4. The fees charged for using the cluster's facilities and for participating in the cluster's activities shall correspond to the market price or reflect their costs.
5. Investment aid may be granted for the construction or upgrade of the cluster. The eligible costs shall be the investment costs in intangible and tangible assets.
6. The aid intensity of investment aid for innovation clusters shall not exceed [50] % of the eligible costs.
7. Operating aid may be granted for the operation of innovation clusters. It shall not exceed five years.
8. The eligible costs shall be the personnel and administrative costs (including overhead costs) relating to:
  - (a) animation of the cluster to facilitate collaboration, information sharing and the provision or channelling of specialised and customised business support services;
  - (b) marketing of the cluster to increase participation of new undertakings or organisations and to increase visibility;
  - (c) management of the cluster's facilities; organisation of training programmes, workshops and conferences to support knowledge sharing and networking and transnational cooperation.
9. The aid intensity of operating aid shall not exceed [50] % of the total eligible costs during the five years period.

*Article 27*  
***Innovation aid for SMEs***

1. Innovation aid for SMEs shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled :
2. The following costs shall be eligible:
  - (a) costs for obtaining, validating and defending patents and other intangible assets;
  - (b) costs for secondment of highly qualified personnel from a research and knowledge-dissemination organization or a large enterprise, working on

- research, development and innovation activities in a newly created function within the beneficiary and not replacing other personnel;
- (c) costs for innovation advisory and support services;
3. The aid intensity shall not exceed [50]% of the eligible costs.

#### *Article 28*

##### ***Aid for process and organisational innovation***

1. Aid for process and organisational innovation shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. Large undertakings shall only be eligible if they effectively collaborate with SMEs in the aided activity and the collaborating SMEs incur at least 30 % of the total eligible costs.
3. The eligible costs shall be the following:
  - (a) personnel costs;
  - (b) costs of instruments, equipment, buildings and land to the extent and for the period used for the project;
  - (c) cost of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions;
  - (d) additional overheads and other operating costs, including costs of materials, supplies and similar products, incurred directly as a result of the project.
4. The aid intensity shall not exceed [15] % of the eligible costs for large undertakings and 50 % of the eligible costs for SMEs.

#### *Article 29*

##### ***Aid for research and development in the fishery and aquaculture sector***

1. Aid for research and development in the fishery and aquaculture sector shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I of this Regulation are fulfilled.
2. The research and development project shall be of interest to all operators in the particular sector or sub-sector concerned.
3. Information that the research and development project will be carried out and the goal of such research and development, shall be published on the internet, prior to the commencement of the research and development project. An approximate date when the results are expected and the place where they will be published on the internet, as well as a statement that the result will be available at no cost, must be included.
4. The results of the research and development shall be made available on internet, for a period of at least 5 years. They shall be published no later than any information which may be given to members of any particular organisation.

5. Aid shall be granted directly to the research and knowledge-dissemination organisation and must not involve the direct granting of non-research related aid to an undertaking producing, processing or marketing fishery or aquaculture products.
6. The eligible costs shall be those provided in Article 24 (3).
7. The aid intensity shall not exceed 100% of the eligible costs.

## **SECTION 5- TRAINING AID**

### *Article 30*

#### ***Training aid***

1. Training aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. Aid shall not be granted where training ensures that companies comply with national mandatory standards on training.
3. The eligible costs shall be:
  - (a) trainers' personnel costs, for the hours during which the trainers participate in the training;
  - (b) trainers' and trainees' operating costs directly relating to the training project such as travel expenses, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the training project. Accommodation costs are excluded except for the minimum necessary accommodation costs for trainees' who are workers with disabilities;
  - (c) advisory service costs linked to the training project;
  - (d) where the aid is granted to SMEs, trainees' personnel costs and general indirect costs (administrative costs, rent, overheads) for the hours during which the trainees participate in the training.
4. The aid intensity shall not exceed 50% of the eligible costs. It may be increased, up to a maximum aid intensity of 70% of the eligible costs, as follows:
  - (a) by 10 percentage points if the training is given to workers with disabilities or disadvantaged workers;
  - (b) by 10 percentage points if the aid is awarded to medium-sized enterprises and by 20 percentage points if the aid is awarded to small enterprises;
5. Where the aid is granted in the maritime transport sector, the aid intensity may be increased to 100% of the eligible costs provided that the following conditions are met:
  - (a) the trainees are not active members of the crew but are supernumerary on board; and
  - (b) the training is carried out on board of ships entered in Union registers.

## **SECTION 6 - AID FOR DISADVANTAGED WORKERS AND FOR WORKERS WITH DISABILITIES**

### *Article 31*

#### **Aid for the recruitment of disadvantaged workers in the form of wage subsidies**

1. Aid schemes for the recruitment of disadvantaged workers shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. Eligible costs shall be the wage costs over a maximum period of 12 months following recruitment of a disadvantaged worker. Where the worker concerned is a severely disadvantaged worker, eligible costs shall be the wage costs over a maximum period of 24 months following recruitment.
3. Where the recruitment does not represent a net increase, compared with the average over the previous twelve months, in the number of employees in the undertaking concerned, the post or posts shall have fallen vacant following voluntary departure, disabilities, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.
4. Except in the case of lawful dismissal for misconduct, the disadvantaged worker shall be entitled to continuous employment for a minimum period consistent with the national legislation concerned or any collective agreements governing employment contracts.
5. If the period of employment is shorter than 12 months for a disadvantaged worker or 24 months for a severely disadvantaged worker, the aid shall be reduced pro rata accordingly.
6. The aid intensity shall not exceed 50 % of the eligible costs.

### *Article 32*

#### **Aid for the employment of workers with disabilities in the form of wage subsidies**

1. Aid for the employment of workers with disabilities shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. Eligible costs shall be the wage costs over any given period during which the worker with disabilities is being employed.
3. Where the recruitment does not represent a net increase, compared with the average over the previous twelve months, in the number of employees in the undertaking concerned, the post or posts shall have fallen vacant following voluntary departure, disabilities, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy.
4. Except in the case of lawful dismissal for misconduct the workers shall be entitled to continuous employment for a minimum period consistent with the national

legislation concerned or any collective agreements which are legally binding for the undertaking and governing employment contracts.

5. If the period of employment is shorter than 12 months, the aid shall be reduced pro rata accordingly.
6. The aid intensity shall not exceed 75 % of the eligible costs.

#### *Article 33*

#### ***Aid for compensating the additional costs of employing workers with disabilities***

1. Aid for compensating the additional costs of employing workers with disabilities shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. The eligible costs shall be the following:
  - (a) costs of adapting the premises;
  - (b) costs of employing staff solely for time spent on the assistance of the workers with disabilities and of training such staff to assist workers with disabilities;
  - (c) costs of adapting or acquiring equipment, or acquiring and validating software for use by workers with disabilities, including adapted or assistive technology facilities, which are additional to those which the beneficiary would have incurred had it employed workers who are not workers with disabilities;
  - (d) costs directly linked to transport of workers with disabilities to the working place and for work related activities;
  - (e) wage costs for the hours spent by a worker with disabilities on rehabilitation;
  - (f) where the beneficiary provides sheltered employment, the costs of constructing, installing or modernising the production units of the undertaking concerned, and any costs of administration and transport, provided that such costs result directly from the employment of workers with disabilities.
3. The aid intensity shall not exceed 100% of the eligible costs.

### **SECTION 7 – AID FOR ENVIRONMENTAL PROTECTION**

#### *Article 34*

#### ***Investment aid enabling undertakings to go beyond Union standards for environmental protection or increase the level of environmental protection in the absence of Union standards***

1. Investment aid enabling undertakings to go beyond Union standards for environmental protection or increase the level of environmental protection in the absence of Union standards shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2. The investment shall fulfill one of the following conditions:
  - (a) it shall enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable Union standards, irrespective of the presence of mandatory national standards that are more stringent than the Union standards;
  - (b) it shall enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Union standards.
3. Aid may not be granted where investments are to ensure that companies comply with Unions standards already adopted and not yet in force.
4. By derogation from paragraph 3, aid may be granted for
  - the acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted EU standards, provided that the acquisition occurs before these standards enter into force and that, once mandatory, they do not apply to vehicles already purchased before that date.
  - for retrofitting operations of existing transport vehicles for road, railway, inland waterway and maritime transport, provided that the EU standards were not yet in force at the date of entry into operation of these vehicles and that, once mandatory, they do not apply retroactively to those vehicles.
5. The eligible costs shall be the investment costs necessary to go beyond the applicable Union standards. The costs not directly linked to the achievement of the higher level of environmental protection are not eligible. In particular, the eligible costs shall be the following:
  - (a) where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost shall constitute the eligible costs;
  - (b) in all other cases, the costs of investing in environmental protection are identified by reference to a similar, less environmental friendly investment that would have been credibly carried out without the aid. The difference identifies the environmental protection-related cost and constitutes the eligible costs.
6. The aid intensity shall not exceed [35]% of the eligible costs.
7. The aid intensity may be increased by [10] percentage points for aid awarded to medium sized undertakings and by [20] percentage points for aid awarded to small undertakings.
8. The aid intensity may be increased by [15] percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by [5] percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.
9. Aid for investments relating to the management of waste of other undertakings shall not be exempt under this Article.

### *Article 35*

#### ***Investment aid for early adaptation to future Union standards***

1. Aid allowing [undertakings] to comply with new Union standards which increase the level of environmental protection and are not yet in force shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. The Union standards shall have been adopted and the investment shall be finalised at least one year before the date of entry into force of the standard concerned.
3. The eligible costs shall be the investment costs necessary to go beyond the applicable Union standards. The costs not directly linked to the achievement of the higher level of environmental protection shall not be eligible. In particular, the eligible costs shall be the following:
  - (a) where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost shall constitute the eligible costs;
  - (b) in all other cases, the costs of investing in environmental protection are identified by reference to a similar, less environmental friendly investment that would have been credibly carried out without the aid. The difference identifies the environmental protection-related cost and constitutes the eligible costs.
4. The aid intensity shall not exceed
  - [20]% of the eligible costs for small undertakings and [15]% of the eligible costs for medium-sized undertakings [and [10]% of the eligible costs for large undertakings] if the implementation and finalisation take place more than three years before the date of entry into force of the standard and if the eligible costs are calculated on the basis of point 3a or 3b;
  - [15]% of the eligible costs for small undertakings [and [10]% of the eligible costs for medium-sized undertakings and [5]% of the eligible costs for large undertakings] if the implementation and finalisation take place between one and three years before the date of entry into force of the standard and if the eligible costs are calculated on the basis of point 3a or 3b ;
5. The aid intensity may be increased by [15] percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by [5] percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.
6. Aid for investments relating to the management of waste of other undertakings shall not be exempt under this Article.

### *Article 36*

#### ***Investment aid for energy saving measures***

1. Investment aid enabling undertakings to achieve energy savings shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.

2. Aid may not be granted where improvements are to ensure that companies comply with Union standards already adopted, even if they are not yet in force.
3. The eligible costs shall be the investment costs necessary to achieve the higher level of energy saving. The costs not directly linked to the achievement of the higher level of energy saving shall not be eligible. In particular, the eligible costs shall be the following:
  - (a) where the costs of investing in energy saving can be identified in the total investment cost as a separate investment, this energy saving-related cost shall constitute the eligible costs;
  - (b) in all other cases, the costs of investing in energy saving are identified by reference to a similar, less energy saving investment that would have been credibly carried out without the aid. The difference identifies the energy saving-related cost and constitutes the eligible costs.
4. The aid intensity shall not exceed [20]% of the eligible costs.
5. The aid intensity may be increased by [20] percentage points for aid awarded to small undertakings and by [10] percentage points for aid awarded to medium-sized undertakings.
6. The aid intensity may be increased by [15] percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by [5] percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

#### *Article 37*

#### ***Aid for energy efficiency projects***

1. Energy efficiency aid shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. Eligible for aid under the present article are energy efficiency projects relating to buildings.
3. The aid can be granted in the form of a loan with a subsidized interest rate to an energy efficiency fund or financial intermediary, which shall fully pass it on to the building owners.
4. The nominal value of the loan, at project level, shall not exceed EUR [10] million.
5. The repayment by the building owners to the energy efficiency fund or financial intermediary shall not be less than the nominal value of the loan.
6. The energy efficiency aid shall leverage additional investment from private investors reaching at minimum 30% of the total financing provided to an energy efficiency project. When the aid is provided by an energy efficiency fund, the leverage of private investment can be done at the level of the energy efficiency fund and/or at the level of the energy efficiency projects, so as to achieve an aggregate minimum 30% of the total financing provided to an energy efficiency project.
7. Member States can set up energy efficiency funds and/or can use financial intermediaries when providing energy efficiency aid. The following conditions must then be fulfilled

- (a) Financial intermediaries, as well as energy efficiency fund managers shall be selected through an open, transparent and non-discriminatory procedure in accordance with applicable Union and national laws. In particular, there shall be no discrimination on the basis of their place of establishment or incorporation in any Member State. Financial intermediaries and energy efficiency fund managers may be required to fulfil predefined criteria objectively justified by the nature of the investments;
  - (b) The private investors shall be selected through an open, transparent and non-discriminatory call in accordance with applicable Union and national laws aimed at establishing the appropriate risk-reward sharing arrangements whereby asymmetric profit-sharing shall be given preference over downside protection. If the private investors are not selected by such a call, the Fair Rate of Return to the private investors shall be established by an independent expert selected via an open, transparent and non-discriminatory call;
  - (c) In the case of asymmetrical loss-sharing between public and private investors, the first loss assumed by the public investor shall be capped at [25%] of the total investment, but not more than the maximum aid amount established in paragraph 4;
  - (d) The investors shall be allowed to be represented in the governance bodies of the energy efficiency fund, such as the supervisory board or the advisory committee.
  - (e) The energy efficiency fund shall be established according to the applicable laws and a due diligence process shall take place to ensure a commercially sound investment strategy;
8. Financial intermediaries and energy efficiency funds shall be managed on a commercial basis and shall ensure profit-driven financing decisions. This is considered to be the case when the financial intermediary and, as the case may be, the managers of the energy efficiency fund fulfill the following conditions:
- (a) they are obliged by law or contract to act with the diligence of a professional manager in good faith and avoiding conflicts of interest; best practices and regulatory supervision shall apply;
  - (b) their remuneration is conform to market practices. This requirement is presumed to be met where the manager is selected through an open, transparent and non-discriminatory competitive call, based on objective criteria linked to experience, expertise and operational and financial capacity;
  - (c) they shall receive a remuneration linked to performance, or shall share part of the investment risks by co-investing own resources so as to ensure that their interests are permanently aligned with the interests of the public investor;
  - (d) they shall set out an investment strategy, criteria and the proposed timing of investments in energy efficiency projects, establishing the ex-ante financial viability and their expected impact on energy efficiency;
  - (e) a clear and realistic exit strategy shall exist for the energy efficiency fund, or for the public funds invested in the energy efficiency fund, allowing the market to finance energy efficiency projects when the market is ready to do so.
9. Energy efficiency improvements to ensure that the beneficiary complies with Union standards which are already adopted shall not be exempt under this Article.

### *Article 38*

#### ***Investment aid for high-efficiency cogeneration***

1. Investment aid for high-efficiency cogeneration shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. A new cogeneration unit shall overall make primary energy savings compared to separate production as provided for by Directive 2012/27/EU<sup>32</sup>. The improvement of an existing cogeneration unit or conversion of an existing power generation unit into a cogeneration unit shall result in primary energy savings compared to the original situation.
3. The investment aid shall be granted to newly installed [or refurbished] capacities only.
4. The eligible costs shall be investment costs for the additional equipment needed for the installation to operate as a high-efficiency cogeneration installation or to upgrade to a higher efficiency when an existing installation meets already the high-efficiency threshold.
5. The aid intensity shall not exceed [45]% of the eligible costs. The aid intensity may be increased by [20] percentage points for aid awarded to small undertakings and by [10] percentage points for aid awarded to medium-sized undertakings.
6. The aid intensity may be increased by [15] percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by [5] percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.
7. Aid for investments relating to the management of waste of other undertakings shall not be exempted under this Article.

### *Article 39a*

#### ***Investment aid for the promotion of energy from renewable sources***

1. Aid for the promotion of energy from renewable energy sources shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. Aid for the production of biofuels shall be exempt from the notification requirement only to the extent that the investments are not used or the production of biofuels produced from cereal and other starch rich crops, sugars and oil crops as defined in the Commission's proposal COM(2012)595<sup>33</sup>.
3. The investment aid shall be granted to new installations only.
4. The eligible costs shall be investment costs necessary to achieve the higher level of environmental protection. The costs not directly linked to the achievement of the higher level of environmental protection shall not be eligible. In particular, the eligible costs shall be the following:

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<sup>32</sup> OJ L 315, 14.11.2012, p. 1.

<sup>33</sup> The Directive will be applicable once adopted

- (a) where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost shall constitute the eligible costs;
  - (b) [in all other cases, the costs of investing in environmental protection are identified by reference to a similar, less environmental friendly investment that would have been credibly carried out without the aid. The difference identifies the environmental protection-related cost and constitutes the eligible costs].
5. If electricity is supplied to the grid, the producers or where relevant aggregator shall be subject to standard balancing responsibilities where competitive intra-day balancing markets exist.
6. The aid intensity shall not exceed [45]% of the eligible costs.
7. The aid intensity may be increased by [20] percentage points for aid awarded to small undertakings and by [10] percentage points for aid awarded to medium-sized undertakings.
8. The aid intensity may be increased by [15] percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by [5] percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

#### *Article 39b*

##### ***Operating aid for the promotion of electricity from renewable sources***

1. Aid for the promotion of electricity from renewable energy sources shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. Aid shall be granted in a genuinely competitive bidding process on the basis of clear, transparent and non-discriminatory criteria. All generators producing electricity from renewable energy sources shall be allowed to bid for the aid on a non-discriminatory basis.
3. Member States may require that one renewable energy source is not allocated more than [80]% of the total budget.
4. Member States may exclude from the bidding process electricity produced from specific renewable sources in certain geographical areas if necessary to secure grid stability; they may also exclude electricity produced from biomass as energy source. No other operating aid may be granted to electricity production excluded under this provision.
5. Aid shall be granted in the form of feed-in-premiums.
6. Aid shall only be granted until the plant generating the electricity from renewable sources has been fully depreciated according to generally accepted accounting principles. Any investment aid previously received must be deducted from the operating aid.
7. Beneficiaries are subject to standard balancing responsibilities, where competitive intra-day balancing markets exist.

#### *Article 39c*

#### ***Operating aid for the promotion of energy from renewable sources in small scale installations***

1. Aid for the promotion of energy from renewable energy sources in small scale installations shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. Aid shall only be granted to installations with a production capacity of less than [1] MW for the production of energy from all renewable sources except for wind energy, where a threshold of [5 MW of 3 generation units] applies, and biofuels where a threshold of [X] applies. For the purpose of calculating the above maximum capacities, small scale installations with a common connection point to the electricity grid shall be considered as one installation.
3. Aid shall not be granted to installations producing biofuels from cereal and other starch rich crops, sugars and oil crops as defined in the Commission's proposal COM(2012)595<sup>34</sup>.
4. The aid per unit of energy shall not exceed the difference between the total levelized costs of producing energy from the renewable source in question and the market price of the form of energy concerned. The levelized costs shall be updated regularly, at least every [6 months] or each [1 GW] of installed new capacity. .
5. The maximum rate of return used in the levelized cost calculation shall not exceed [the relevant swap rate plus a premium of 100 basis points]. The relevant swap rate shall be the swap rate of the currency in which the aid is granted for a maturity that reflects the depreciation period of the installations supported.
6. Aid shall only be granted until the installation has been fully depreciated according to generally accepted accounting principles. Any investment aid granted to an installation in addition to the operating aid under this provision must be deducted.

#### *Article 40*

#### ***Aid in the form of reductions in environmental taxes under Directive 2003/96/EC***

1. Aid schemes in the form of reductions in environmental taxes pursuant to Directive 2003/96/EC<sup>35</sup> shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. The beneficiaries of the tax reduction shall pay at least the Union minimum tax level set by Directive 2003/96/EC.
3. This Article shall not apply to aid in the form of tax exemptions that are covered by other provisions of this Section.

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<sup>34</sup> The definitions of the Directive will apply as of the moment that the Directive is adopted.

<sup>35</sup> OJ L 283, 31.10.2003, p. 51.

*Article 41*

***Investment aid for remediation of contaminated sites***

1. Investment aid to undertakings repairing environmental damage by remediating contaminated sites shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. The investment shall lead to an improvement of environmental protection. The environmental damage to be repaired shall cover damage to the quality of the soil or of surface water or groundwater.
3. Where the person liable under the law applicable in each Member State without prejudice to the adoption of EU rules in this matter is identified, that person must finance the remediation in accordance with the "polluter pays" principle, and no State aid shall be granted. Where the person liable under the applicable law is not identified or cannot be made to bear the costs, the person responsible for the remediation or contamination work may receive State aid.
4. The eligible costs shall be the costs incurred for the remediation work, less the increase in the value of the land. All expenditure incurred by an undertaking in remediating its site, whether or not such expenditure can be shown as a fixed asset on its balance sheet, may rank as eligible investment in the case of the remediation of contaminated sites.
5. Evaluations of the increase in value of the land resulting from remediation have to be carried out by an independent expert.
6. The aid intensity shall not exceed [100]% of the eligible costs.

#### *Article 42*

##### ***Investment aid for energy efficient district heating and cooling***

1. Investment aid for the installation of an efficient district heating and cooling system shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. The system satisfies the definition of energy efficient district heating and cooling system as set out in Article 2(41) and (42) of Directive 2012/27/EU<sup>36</sup>.
3. The eligible costs for the generation installation shall be the investment costs for the additional equipment needed for the construction, expansion, refurbishment of one or more generation units to operate as an energy efficient district heating and cooling system. The investment shall be an integral part of the efficient district heating and cooling system.
4. The eligible costs for the distribution network shall be the total investment costs of the network or its refurbishment.
5. The aid intensity shall not exceed [45]% of the eligible costs. The aid intensity may be increased by [20] percentage points for aid awarded to small undertakings and by [10] percentage points for aid awarded to medium-sized undertakings.
6. The aid intensity may be increased by [15] percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by [5] percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.
7. No aid can be given to achieve compliance with Union legal standards applying to district heating and cooling systems.

#### *Article 43*

##### ***Aid for environmental studies***

1. Aid for studies, including energy audits, directly linked to investments referred to in this Section shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. No aid shall be granted to large undertakings for energy audits carried out under Article 8(4) of the Energy Efficiency Directive 2012/27/EU.
3. The eligible costs shall be the costs of the studies mentioned in paragraph 1.
4. The aid intensity shall not exceed 50% of the eligible costs.
5. The aid intensity may be increased by 20 percentage points for studies undertaken on behalf of small enterprises and by 10 percentage points for studies undertaken on behalf of medium size enterprises.

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<sup>36</sup> OJ L 315, 14.11.2012, p. 1.

## **SECTION 8 – AID TO MAKE GOOD THE DAMAGE CAUSED BY CERTAIN NATURAL DISASTERS**

### *Article 44*

#### *Aid schemes to make good the damage caused by certain natural disasters*

1. Aid schemes to make good the damage caused by earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions and wild fires shall be compatible with the internal market within the meaning of Article 107(2)(b) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. Aid shall be granted subject to the following conditions:
  - (a) the competent public authorities of a Member State have formally recognised the character of the event as a natural disaster ; and
  - (b) there is a direct causal link between the damage caused by the natural disaster and the damages suffered by the undertaking.
3. Aid schemes related to a specific natural disaster shall be introduced within three years following the occurrence of the event. Aid on the basis of such schemes shall be granted within four years following the occurrence.
4. The eligible costs shall be the damage incurred as a direct consequence of the natural disaster, as assessed by an independent expert recognised by the competent national authority or by an insurance undertaking. This damage may include material damage to assets (e.g. buildings, equipment, machinery, stocks) and loss of income due to the full or partial suspension of activity for a period not exceeding six months from the occurrence of the disaster. The calculation of the material damage shall be based on the repair cost or economic value before disaster of the affected asset (e.g. book value). Loss of income shall be calculated for the same period on the basis of financial data of the undertaking (earnings before interest and taxes (EBIT), depreciation and labour costs only related to the establishment affected by the natural disaster) from an average of five previous years excluding the single best and worst financial result. The damage shall be calculated at the level of the individual beneficiary.

The aid and any other payments received to compensate the damage, including payments under insurance policies, shall not exceed 100% of the eligible costs.

## **SECTION 9 - SOCIAL AID FOR TRANSPORT FOR RESIDENTS OF REMOTE REGIONS**

### *Article 45*

#### *Social aid for transport for residents of remote regions*

1. Aid for air and maritime passenger transport shall be compatible with the internal market pursuant to Article 107(2)(a) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled. The publication obligations

laid down in Article 9 (1) shall apply exclusively to aid schemes and not to individual aid awards.

2. The entire aid shall be for the benefit of final consumers who have their normal residence in remote regions.
3. The aid shall be granted for passenger transport on a route linking an airport or port in a remote region with another airport or port within the European Economic Area.
4. The aid shall be granted without discrimination as to the identity of the carrier or type of service and without limitation as to the precise route to or from the remote region.
5. The eligible costs shall be the price of a return ticket from or to the remote region, including all taxes and charges invoiced by the carrier to the consumer. The eligible costs shall be limited to the cost of the most economical available journey for the mode of transport chosen.
6. The aid intensity shall not exceed 50% of the eligible costs.

## **SECTION 10 - AID FOR BROADBAND INFRASTRUCTURES**

### *Article 46*

#### *Aid for broadband infrastructures*

1. Investment aid for broadband network development shall be compatible with the internal market pursuant to Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The eligible costs shall be:
  - (a) investment costs for the deployment of a passive broadband infrastructure;
  - (b) investment costs of broadband-related civil engineering works;
  - (c) investment costs for the deployment of basic broadband networks ; and
  - (d) investment costs for the deployment of next generation access ('NGA') networks.
3. The investment shall be located in areas where there is no infrastructure of the same category (either basic broadband or NGA network) and where no such infrastructure is likely to be developed on commercial terms within three years from the decision to grant the aid, which shall also be verified through an open public consultation.
4. The aid shall be allocated on the basis of an open, transparent and non-discriminatory competitive selection process respecting the principle of technology neutrality.
5. The network operator shall offer the widest possible active and passive wholesale access under fair and non-discriminatory conditions, including physical unbundling in case of NGA networks. Such wholesale access shall be granted for at least 7 years and the right of access to ducts or poles shall not be limited in time. In case of aid for the construction of ducts, the latter shall be large enough to cater for several cable networks and different network topologies.

6. The wholesale access price shall be based on the pricing principles set by the national regulatory authority and on benchmarks that prevail in other comparable, more competitive areas of the country or the Union taking into account the aid received by the network operator. The national regulatory authority shall be consulted on access conditions (including pricing) and in case of dispute between access seekers and the subsidised infrastructure operator.
7. Member States shall put in place a monitoring and claw-back mechanism if the aid amount of the project exceeds EUR 10 million.

## **SECTION 11 - AID FOR CULTURE AND HERITAGE CONSERVATION**

### *Article 47*

#### *Aid for culture and heritage conservation*

1. Aid for culture and heritage conservation shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. Aid to press and magazines, whether they are published in print or electronically, shall not be eligible under this Regulation.
3. The aid shall be granted for the following cultural purposes and activities:
  - (a) museums, archives, libraries, cultural centres or spaces, theatres, opera houses, concert halls, other live performance organisations, film libraries ('cinematheques') and other similar cultural infrastructures, organisations and institutions;
  - (b) tangible heritage including in particular all forms of movable or immovable cultural heritage and archaeological sites, monuments, historical sites and buildings; natural heritage of villages, coastal and rural landscapes only if directly linked to cultural heritage or if formally recognized as cultural or natural heritage by the competent public authorities of a Member State;
  - (c) intangible heritage in all its forms, including in particular folklorist customs and crafts;
  - (d) art or cultural events and performances, festivals, exhibitions and other similar cultural activities;
  - (e) publishing of music and literature, including translations.
4. The aid may take the form of:
  - (a) investment aid, including aid for the construction or upgrade of culture infrastructure;
  - (b) operating aid.
5. For investment aid, the eligible costs shall be the investment costs in intangible and tangible assets, including:
  - (a) costs for the construction, upgrade, acquisition, conservation or improvement of infrastructure, if at least 80% of either the time or the space capacity per year is used for cultural purposes;

- (b) costs for the acquisition, including leasing, transfer of possession or physical relocation of cultural heritage;
  - (c) costs for safeguarding, preservation, restoration and rehabilitation of tangible and intangible cultural heritage, including extra costs for storage under appropriate conditions, special tools, materials and costs for documentation, research, digitalisation and publication;
  - (d) costs for improving the accessibility of cultural heritage to the public, including costs for digitisation and other new technologies, costs to improve accessibility for persons with special needs (in particular, ramps and lifts for disabled persons, braille indications and hands-on exhibits in museums) and for promoting cultural diversity with respect to presentations, programmes and visitors;
  - (e) costs for cultural projects and activities, cooperation and exchange programmes and grants including costs for selection procedures, costs for promotion and costs incurred directly as a result of the project.
6. For operating aid, the eligible costs shall be the following:
- (a) the cultural institution's or heritage site's costs linked to continuous or periodic activities including exhibitions, performances and events and similar cultural activities that occur in the ordinary course of business;
  - (b) operating costs directly relating to the cultural project or activity, such as travel expenses, materials and supplies directly related to the cultural project or activity, architectural structures for exhibitions and stage sets, depreciation of tools, software and equipment, costs for access rights to copyright works and other related intellectual property rights protected contents, costs for promotion and costs incurred directly as a result of the project or activity;
  - (c) costs for personnel working for the cultural institution or heritage site or for a project;
  - (d) costs for advisory and support services provided by outside consultants and service providers, incurred directly as a result of the project.
7. The maximum aid intensity shall not exceed 100% of the eligible costs. For publishing of music and literature including translations, the maximum aid intensity shall not exceed 70% of the eligible costs. The net revenues shall be deducted from the eligible costs ex ante or through a clawback mechanism.

#### *Article 48*

#### *Aid schemes for audio-visual works*

1. Aid schemes to support the script-writing, development, production, distribution and promotion of audio-visual works shall be compatible with the internal market pursuant to Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. Aid shall be directed to a cultural product. To avoid manifest errors, each Member State shall establish effective processes, such as selection of proposals by one or more persons entrusted with the selection or verification against a predetermined list of cultural criteria.

3. Aid may take the form of:
  - (a) aid to the production of audio-visual works;
  - (b) pre-production aid; and
  - (c) distribution aid.
4. Aid shall not be reserved for specific production activities or individual parts of the production value chain. Aid for film studio infrastructures shall not be eligible under this Regulation.
5. If Member States make the aid subject to territorial spending obligations, aid schemes for the production of audio-visual works may either:
  - (a) require that up to 160% of the aid granted to the production of a given audio-visual work is spent in the territory of the Member State granting the aid; or
  - (b) calculate the aid granted to the production of a given audio-visual work as a percentage of the expenditure on production activities in the granting Member State, typically in case of aid schemes in the form of tax incentives.

In both cases, if a Member States requires a minimum level of production activity in the territory concerned for projects to be eligible for aid, this level shall not exceed 50% of the overall production budget. In addition, the maximum expenditure subject to territorial spending shall in no case exceed 80% of the overall production budget.

6. Aid shall not be reserved exclusively for nationals and beneficiaries shall not be required to have the status of undertaking established under national commercial law.
7. The eligible costs shall be the following:
  - (a) for production aid: the overall costs of production of audio-visual works including costs to improve accessibility for persons with disabilities.
  - (b) for pre-production aid: the costs of script-writing and the development of audio-visual works.
  - (c) for distribution aid: the costs of distribution and promotion of audio-visual works.
8. The aid intensity for the production of audio-visual works shall not exceed 50% of the eligible costs.
9. The aid intensity may be increased as follows:
  - (a) to 60% of the eligible costs for cross-border productions funded by more than one Member State and involving producers from more than one Member State;
  - (b) to 100% of the eligible costs for difficult audio-visual works and co-productions involving countries from the DAC List of the OECD.
10. The aid intensity for pre-production shall not exceed 100% of the eligible costs. If the resulting script or project is made into an audio-visual work such as a film, the pre-production costs shall be incorporated in the overall budget and taken into account when calculating the aid intensity. The aid intensity for distribution shall be the same as the aid intensity for production.

## **SECTION 12 - AID FOR SPORT AND MULTIFUNCTIONAL RECREATIONAL INFRASTRUCTURES**

### *Article 49*

#### ***Aid for sport and multifunctional recreational infrastructures***

1. Aid for sport and multifunctional recreational infrastructures shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempt from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. Sport infrastructure shall not be used exclusively by a single professional sport user and the use by other professional or non-professional sport users shall annually account for at least 20% of time capacity. If the infrastructure is used by several users simultaneously, corresponding fractions of time capacity usage shall be calculated.
3. Multifunctional recreational infrastructure shall consist of recreational facilities with a multi-functional character offering, in particular, cultural and recreational services with the exception of leisure parks and hotel facilities.
4. Access to the sport or multifunctional recreational infrastructures shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 30% of the investment costs of the infrastructure may be granted preferential access with more favourable conditions, provided these conditions are made publicly available.
5. If sport infrastructure is used by professional sport clubs, Member States shall ensure that the pricing conditions for its use are made publicly available.
6. Any concession or other entrustment to a third party to construct, upgrade and/or operate the sport or multifunctional recreational infrastructure shall be assigned on a transparent and non-discriminatory basis, having due regard to the applicable procurement rules.
7. The eligible costs shall be the investment costs in tangible and/or intangible assets and additional operating costs resulting from the investment in the sport or multifunctional recreational infrastructure over the reference period, which is the depreciation period.
8. The aid shall not exceed [75]% of the total eligible costs. The net revenues shall be deducted from the eligible costs ex ante or through a clawback mechanism.

## **CHAPTER IV Final Provisions**

### *Article 50*

#### ***Repeal***

1. Regulation (EC) No 800/2008 shall be repealed.
2. Any references to the repealed Regulation shall be construed as references to this Regulation.

*Article 51*  
***Transitional provisions***

1. This Regulation shall apply to individual aid granted before its entry into force, if the aid fulfils all the conditions laid down in this Regulation, with the exception of Article [9].
2. Any aid granted before 01.07.2014 by virtue of any regulation adopted pursuant to Article 1 of [Enabling Reg. 994/98] previously in force shall be compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty. Risk capital aid schemes in favour of SMEs set up before 1 July 2014 and exempted from the notification requirement of Article 108(3) of the Treaty under Regulation No. 800/2008, shall remain exempted and compatible with the internal market until the termination of the funding agreement, provided the commitment of the public funding into the supported private equity investment fund, on the basis of such agreement, was made before the entry into force of this Regulation, and the other conditions for exemption remain fulfilled
3. Any aid not exempted from the notification requirement of Article 108(3) of the Treaty by virtue of this or other regulations adopted pursuant to Article 1 of [Enabling Reg. 994/98] previously in force shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.
4. At the end of the period of validity of this Regulation, any aid schemes exempted under this Regulation shall remain exempted during an adjustment period of six months, with the exception of regional aid schemes. The exemption of regional aid schemes shall expire at the date of expiry of the approved regional aid maps. The exemption of risk finance aid exempted pursuant to Article 20(2)(a) shall expire at the end of the duration foreseen in the funding agreement, provided the commitment of public funding to the supported private equity investment fund was made on the basis of such agreement before the end of the period of validity of this Regulation and all other conditions for exemption remain fulfilled.
5. Member State shall comply with the provisions of [Article 9(c)] at the latest within two years after the entry into force of this Regulation.

*Article 52*

This Regulation shall enter into force on the *[twentieth]* day following that of its publication in the *Official Journal of the European Union*.

It shall apply until 31 December 2020. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18.12.2013

*For the Commission*  
*The President*